

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

- - - - -

Karl Shaw,	:	
	:	
Plaintiff,	:	
	:	Case No. 2:18-cv-483
vs.	:	Judge Graham
	:	Magistrate Judge Vascura
City of Columbus,	:	
et al.,	:	
	:	
Defendants.	:	

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DEPOSITION OF JENNIFER KNIGHT

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Taken at Spectrum Reporting LLC
400 S. Fifth Street, Ste. 201
Columbus, OH 43215
June 14, 2019, 11:54 a.m.

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A P P E A R A N C E S

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and

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By Richard N. Coglianese, Esq. and
Cyndy Peterson, Esq.

ALSO PRESENT:

Karl Shaw

Friday Morning Session

June 14, 2019, 11:54 a.m.

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S T I P U L A T I O N S

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It is stipulated by counsel in attendance that the deposition of Jennifer Knight, a witness herein, called by the Plaintiff for cross-examination, may be taken at this time by the notary pursuant to notice and subsequent agreement of counsel that said deposition may be reduced to writing in stenotypy by the notary, whose notes may thereafter be transcribed out of the presence of the witness; that proof of the official character and qualification of the notary is waived.

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(Exhibits retained by Spectrum Reporting)

1 JENNIFER KNIGHT

2 being first duly sworn, testifies and says as
3 follows:

4 CROSS-EXAMINATION

5 BY MR. VARDARO:

6 Q. Could you state your name for the
7 record.

8 A. Commander Jennifer L. Knight,
9 K-N-I-G-H-T.

10 Q. Okay. Who's you're current employment?

11 A. Columbus Division of Police.

12 Q. And your current rank?

13 A. Is commander.

14 Q. Okay. Are you -- I may have
15 misunderstood this. Are you an interim or acting
16 deputy chief?

17 A. I'm an acting deputy chief since
18 probably about coming on five months at this point
19 right now, but my official rank is commander.

20 Q. Okay. Have you been in a deposition
21 before?

22 A. Yes.

23 Q. About how many times?

24 A. I have no idea.

1 Q. Okay. A pretty large number or --

2 A. Fair amount.

3 Q. Okay. When was the last time you can
4 remember?

5 A. It might have been this year.

6 Q. Okay. Do you remember what the case
7 was?

8 A. No.

9 Q. Okay. Do you remember what the case
10 was about?

11 A. I think -- I think it was relative to
12 my tenure in internal affairs, so it was related
13 to an internal affairs case. I believe that was
14 the last one.

15 Q. Okay. Do you know whether it was a
16 citizen complaint or a shooting case or an
17 internal investigation or what?

18 A. I believe the most recent one was
19 related to an internal investigation --

20 Q. Okay.

21 A. -- that occurred during that time.

22 Q. Okay. Any idea who the investigation
23 was?

24 A. I think it was the Zimmerman Lazar

1 case, but honestly I could be wrong.

2 Q. Okay. Well, and how about do you
3 remember -- well, have you been in a deposition
4 about a discrimination case before?

5 A. I'm sure I have.

6 Q. Okay. Is the Zimmerman Lazar case a
7 discrimination case or --

8 A. I believe that was some of the
9 allegations that were made.

10 Q. Okay. Is that the one with the photos
11 from the cell phone or something like that?

12 A. Yes. Yes.

13 Q. Okay. Well, since it's been at least a
14 few months and some of these depositions may run
15 together a little bit, I'll go over some of the
16 ground rules that I use when I do depositions.

17 First of all, I introduced myself
18 earlier, but my name is Jeff Vardaro. I'm one of
19 the attorneys for Karl Shaw in this case. And I
20 will be asking you most, if not all, the questions
21 today.

22 If I ask you a question and you answer
23 it -- actually sorry. If I ask you a question and
24 you don't understand the question, you understand

1 that you can ask me to rephrase it so you can
2 understand it?

3 A. I do understand that.

4 Q. If you answer a question and you don't
5 ask me to rephrase it, I'm going to assume that
6 you understood the question unless you tell me
7 otherwise, okay?

8 A. Okay.

9 Q. Also I'm going to be asking you some
10 questions about things that happened four or
11 five years ago. I understand that nobody's memory
12 is perfect. If you realize in the course of the
13 deposition that you got something wrong or you
14 remembered something that you didn't remember when
15 I first asked it, do you understand you can
16 interrupt me at any point to add to or correct one
17 of your previous answers?

18 A. I do.

19 Q. And you'll do that for me?

20 A. I will.

21 Q. Okay. I'm going to ask you a couple
22 questions I ask almost everybody. First of all,
23 do you suffer from any medical conditions or are
24 you on any medications or drugs that would affect

1 your ability to testify fully and accurately
2 today?

3 A. No.

4 Q. Okay. Do you have -- have you ever
5 been convicted of a crime?

6 A. Does that include traffic offenses?

7 Q. It does not include non criminal
8 traffic offenses, I guess I will say.

9 A. I do not think so.

10 Q. Okay. Did you have an opportunity to
11 meet with counsel to prepare for this deposition?

12 A. Yes, I did.

13 Q. When was that?

14 A. Last week.

15 Q. Okay. Just the one time?

16 A. Yes.

17 Q. For about how long?

18 A. Oh, maybe 40 minutes.

19 Q. Okay. Did you review any documents to
20 prepare for the deposition?

21 A. I don't believe so.

22 Q. Okay. Have you reviewed the lawsuit in
23 this case, the complaint that Karl Shaw filed?

24 A. When it was originally filed, I believe

1 I read it. I have not read it since that time.

2 Q. Okay. Could you -- you reviewed, at
3 some point at least obviously, the investigative
4 summary and investigation materials about the Eric
5 Moore investigation from 2014, 2015, right?

6 A. Yes.

7 Q. When would you say is the last time
8 that you looked at those materials?

9 A. I can tell you I have not looked at
10 those materials since I left internal affairs
11 in -- at the beginning of 2017. I don't believe
12 I've looked at anything since then.

13 Prior to that time, it would have
14 probably been a large amount of time while I was
15 still in internal affairs that I had -- since I
16 had reviewed that material. So it's been a long
17 time since I have reviewed anything for that case
18 in relation to any of the materials I believe.

19 Q. Okay. Have you reviewed any of your
20 e-mails or memos or anything like that from that
21 time period?

22 A. No.

23 Q. Okay. What is your highest level of
24 education?

1 A. Graduated from Capital Law School in
2 2016.

3 Q. Okay. With a JD?

4 A. Uh-huh.

5 Q. Okay. What was your education prior to
6 that?

7 A. I went -- graduated from Capital proper
8 several years prior to that. Sometime in my 40s,
9 I can't remember the exact date, with my
10 bachelor's.

11 Q. What was your bachelor's in?

12 A. Political science and public
13 administration.

14 Q. Okay. I think I know the answer to
15 this, but do you practice law?

16 A. I do not.

17 Q. Okay. Have you ever practiced law?

18 A. I have not.

19 Q. Okay. Taken the bar exam?

20 A. Yes, I have.

21 Q. Pass the bar exam?

22 A. Yes, I did.

23 Q. Okay. Congratulations.

24 And how long -- okay. First of all,

1 how is it that you became an interim or acting
2 deputy chief? Were you filling some vacancy?

3 A. Yes. Chief Kim Jacobs retired the
4 first part of February. Chief Tom Quinlan or
5 Deputy Chief Tom Quinlan was named as the interim
6 chief of police until a -- they completed a
7 search -- national search for a chief of police.

8 I worked for Tom Quinlan, and I was his
9 commander for two years, and I had worked for him
10 previously. We had a very good working
11 relationship. He came to me and said, I have a
12 vacancy, I would like you to come up and fill that
13 vacancy that I am leaving, and it will probably be
14 for an extended period of time. For continuity's
15 sake, he did not want a rotating acting schedule.

16 And I agreed to come up and operate as
17 the deputy chief of patrol north, which was his
18 previous position, and fill that vacancy until a
19 decision was made regarding whether or not he
20 would be named permanent chief or someone else
21 would be named chief.

22 Q. So I think you may have already
23 answered a couple of my next questions, which is
24 was there -- there was no formal selection process

1 or application process for that position?

2 A. No. It's an acting position.

3 Typically short-term actings are rotated
4 positions. Long-term actings are filled at the
5 discretion of the chief of police --

6 Q. Okay.

7 A. -- for those types of positions.

8 Q. Not by seniority?

9 A. No, not by seniority.

10 Q. Were you the most senior commander?

11 A. No. No.

12 Q. Okay. Who would the most senior
13 commander have been, do you know?

14 A. I think that would be Mike Springer.

15 Q. Okay. So your deputy chief assignment
16 is patrol north?

17 A. Yes.

18 Q. Okay. Other than patrol, is there
19 anything under your command?

20 A. Yes. Actually, the strategic response
21 bureau is under that section right now. We are
22 undergoing a reorganization that will occur the
23 14th of July, so we're transitioning, and I will
24 probably be moving subdivisions to be acting over

1 a different subdivision, which will include
2 different bureaus. But right now I have zone one,
3 zone four and strategic response bureau.

4 Q. Prior to being named acting deputy
5 chief, what was your assignment?

6 A. I was the commander of zone four
7 patrol.

8 Q. Who's now the commander of zone four
9 patrol?

10 A. So I filled that vacancy with another
11 acting who was my lieutenant on third shift, who
12 is situated as the first person to get promoted to
13 commander anyway, so that would be the reasonable
14 and natural thing to do would be to put that
15 person in. Worked out very well to just move him
16 into that position, because he had served as
17 acting in the past.

18 Q. And who is it?

19 A. Oh, I'm sorry. Lieutenant Rob Sagle.

20 Q. Okay.

21 A. S-A-G-L-E.

22 Q. All right. And who's the commander in
23 zone one?

24 A. Gary Cameron.

1 Q. Okay. So you're Commander Cameron's
2 direct supervisor currently?

3 A. Yes.

4 Q. Okay. Prior to being zone four
5 commander, what was your assignment?

6 A. Internal affairs commander.

7 Q. For how long?

8 A. Approximately two and a half years.

9 Q. Okay. So roughly you said the
10 beginning of 2017 is when you left IA?

11 A. Correct.

12 Q. So it would have been --

13 A. Well, actually, I think it was
14 August -- August would have been three years,
15 so...

16 Q. August 2014?

17 A. Yeah, is that about right? I think so.

18 Q. I mean, August 2014 would have been
19 right around the time that this --

20 A. Yes, that would be -- that would be
21 correct.

22 Q. -- this particular investigation of
23 Eric Moore started.

24 A. Okay.

1 Q. Does that sound right to you that you
2 would have been just coming into IA?

3 A. I was there approximately two and a
4 half years, so if you work that backwards, it's
5 going to be August of that, you know, prior period
6 of time.

7 Q. Okay. Was that your first assignment
8 as commander or did you --

9 A. No.

10 Q. -- come to IA from something else?

11 A. I was previously assigned to the
12 technical services bureau. Technical services
13 bureau is an assignment that handles fleet for the
14 Division of Police. Police net and IT services
15 for the Division of Police, print shop and some --
16 some of the support services that we were. And
17 that was my first assignment upon being promoted
18 to commander.

19 Q. Okay. And when was that that you were
20 promoted?

21 A. That would have been October of 2012.

22 Q. Okay.

23 A. I believe.

24 Q. And I don't actually -- so is there a

1 test -- is there a promotional like civil service
2 type process for promotion from commander to
3 deputy chief?

4 A. No, there is not.

5 Q. That's all at the discretion of the
6 chief?

7 A. It used to be a testing process. It is
8 no longer a testing process. It is an appointed
9 position with an interview process.

10 Q. Okay. And the interview is just with
11 the chief or --

12 A. No. Actually, the interview starts
13 with the chief. The chief makes -- kind of
14 interviews all applicants, then makes a selection
15 of those applicants and sends a short list over to
16 the director's office. The director's office is
17 actually the one that is the appointing authority
18 for that, but there's a variety of people that
19 will interview you at that level.

20 Q. Okay. Safety director's office is what
21 you're talking about?

22 A. Yes. I'm sorry. Yes.

23 Q. Okay. All right. And when -- so prior
24 to being commander, I assume you were a

1 lieutenant?

2 A. Yes.

3 Q. When were you promoted to lieutenant?

4 Even a ballpark is fine, it doesn't matter much.

5 A. Okay. So I was a lieutenant about
6 three and a half years. If I got promoted to
7 commander in October of 2012, so about three and a
8 half years prior to that, or about -- yeah, about
9 three and a half years prior to that.

10 Q. Okay. And prior to that you were a
11 sergeant?

12 A. Yes.

13 Q. When were you promoted to sergeant?

14 A. I was -- so I came on the division in
15 '96 -- 1996. And I was promoted to sergeant, I
16 think in 2006, so 10 years later I was a sergeant
17 for three years. So about 2009 I would say I was
18 promoted to lieutenant, and then about three years
19 later I was promoted to commander.

20 Q. Okay. In -- prior to being commander
21 of internal affairs, did you have internal affairs
22 experience as a lieutenant or a sergeant?

23 A. No. I had not served any time in
24 internal affairs prior to that.

1 Q. Okay. Did you -- did you have any
2 experience as a detective prior to becoming
3 commander of internal affairs?

4 A. No, I did not.

5 Q. Okay. Maybe I'm looking at any other
6 kind of special investigative unit experience of
7 any kind?

8 A. No. I served the majority of my career
9 in a patrol assignment.

10 Q. Okay. Did you have to go through any
11 kind of application process to become the
12 commander of internal affairs in particular?

13 A. No. All commander assignments --
14 commanders serve at the will of the chief of
15 police. Chief of police makes all assignments --

16 Q. Okay.

17 A. -- at the commander level.

18 Q. Okay. Once you were assigned to
19 internal affairs, did you have to go through some
20 kind of special training in terms of how that unit
21 works, or is it just on the job?

22 A. It is mostly on-the-job training. I
23 did attend an internal affairs investigative kind
24 of course that was in Las Vegas during the course

1 of my tenure there. We're encouraged to look for
2 opportunities for training at that level. Not a
3 lot of them exist for command of an actual unit.

4 Q. What -- how long was the course in
5 Vegas?

6 A. I think it was about a week long that I
7 was down there.

8 Q. Okay. And was it specifically for
9 commanding an investigative unit or just for
10 general internal affairs?

11 A. General internal affairs.

12 Q. Okay. Do you remember any specific
13 thing that you remember thinking about that
14 training, oh, I didn't realize I should do that
15 or, oh, that's something --

16 A. No.

17 Q. -- I should really think about?

18 A. I did not.

19 Q. Okay. Have you had training -- well,
20 I'll start with now I understand you went to law
21 school, did you have -- did you take any classes
22 in law school about equal employment opportunity
23 or discrimination?

24 A. Yes.

1 Q. What classes?

2 A. I don't remember specifically, but it
3 was part of the coursework.

4 Q. Okay. Do you know, was it a general
5 employment law class or was it specifically about
6 discrimination?

7 A. I think that what it was is general
8 labor law, labor and employment law class, and we
9 had sections on discrimination and employment
10 discrimination.

11 Q. Do you remember who taught it?

12 A. I do not.

13 Q. Okay. While you've been with the
14 Columbus Police, have you received in-service
15 training on equal employment opportunity,
16 discrimination, retaliation, that sort of thing?

17 A. Yes, routinely.

18 Q. Okay. When was the last time you went
19 to EEO training?

20 A. I believe we have EEO training or
21 something that touches on EEO training every year
22 at some point. Whether it's encompassed in a
23 greater human resources type training module or
24 not, but typically we have something every single

1 year about that.

2 Q. Okay. What is your understanding of
3 the Columbus Division of Police's policies about
4 equal employment opportunity, discrimination,
5 retaliation?

6 A. Could you be more specific?

7 Q. Is there a policy prohibiting
8 discrimination or retaliation?

9 A. Absolutely.

10 Q. Okay. How does it relate to the laws
11 at the state and federal level in terms of
12 discrimination and retaliation?

13 A. It reflects the laws.

14 MR. COGLIANESE: Objection. Go ahead.

15 THE WITNESS: Sorry.

16 MR. COGLIANESE: That's okay.

17 Q. Are there things that might not rise to
18 the level of a state or federal legal violation in
19 terms of discrimination that would still be
20 against division policy, or is it pretty much a
21 one to one?

22 MR. COGLIANESE: Objection. Go ahead.

23 A. I believe there are.

24 Q. Okay. Do you have any examples?

1 A. I do not.

2 Q. Okay. Is it your understanding that
3 Columbus police officers and civilian staff can be
4 disciplined and terminated for violations of the
5 division's EEO policies?

6 A. Yes, it is my understanding.

7 Q. Okay. Are you familiar with the
8 term -- actually, I'll take that interruption as
9 an opportunity to withdraw my question.

10 You can -- by the way, if you need to
11 take a call, you can.

12 A. No, I -- I can look at it and tell you
13 whether it's important or not.

14 Q. Okay. All right. And I think I
15 promised you beforehand that I would say this on
16 the record and then immediately broke that
17 promise, but if you at any point need to take a
18 break for any reason, fatigue or work interruption
19 or whatever, just let me know and we can take a
20 break. The only thing I'll ask is if there's a
21 question pending, I'll usually insist that you
22 answer the question before we take the break.

23 A. I understand.

24 Q. Unless it's an emergency.

1 Can you tell me, I think you already
2 talked a little bit about your relationship with
3 Chief Quinlan, but do you consider Chief Quinlan a
4 friend?

5 A. A professional friend.

6 Q. Okay. No socializing outside of work?

7 A. No.

8 Q. Okay. How about retired Chief Jacobs,
9 what's your relationship with her?

10 A. Professional.

11 Q. Okay. The -- jump back a second. The
12 EEO training that you've received with the
13 Columbus Police, do you -- did you get handouts,
14 materials and things like that from those kinds of
15 trainings?

16 A. I don't recall. I would believe it's
17 very likely.

18 Q. Okay.

19 A. We typically have handouts for almost
20 every training.

21 Q. Do you keep your training materials
22 or --

23 A. Not normally.

24 Q. Okay. What happens to them?

1 A. I do not know.

2 Q. Okay. You just walk out of the
3 training without the materials or you toss them
4 later or --

5 A. So if I find the materials something
6 that I would want to look at later, I would take
7 them back to my office and potentially file them
8 or read them and then discard them later. If I
9 don't find that there's anything in there that I
10 would like to look at again, then I would leave
11 them in the room.

12 Q. Okay. So do you -- do you have access
13 to the materials from your EEO trainings that
14 you've received since you became a commander, for
15 instance?

16 A. I would believe that if I wanted access
17 to any training materials of any of the courses
18 that we've had to take during inservice, I could
19 call the training academy in advanced training and
20 ask for those.

21 Q. Who typically provides the EEO -- do
22 you typically -- who typically teaches the EEO
23 training courses for the Columbus Police that you
24 get inservice?

1 A. I think the ones I recall, it's usually
2 somebody from human resources.

3 Q. From CPD human resources?

4 A. Yes.

5 Q. Okay. Okay. So going back, your --
6 could you describe your relationship with Chief
7 Jacobs?

8 A. Professional.

9 Q. Okay. Were you ever what you
10 considered personal friends?

11 A. No.

12 Q. Okay. Did you ever go to her house or
13 have her over to your house?

14 A. I don't believe she's ever been to my
15 house and I have never been to her house.

16 Q. Okay. How about Gary Cameron, same
17 questions?

18 A. I've never been to Gary's house. I
19 don't think Gary has ever been to my house.

20 Q. Okay. Did you -- did you at any point
21 report to Commander Cameron?

22 A. I don't believe so.

23 Q. Okay. And prior to this current
24 assignment, did you ever have him reporting to

1 you?

2 A. I don't -- other than when I was in an
3 acting position temporarily, I do not believe so.

4 Q. Okay. That would have been for like a
5 couple days or something at a time?

6 A. Yeah, no long-term acting.

7 Q. Jumping back to -- well, I guess I'll
8 ask about Chief Quinlan first. Do you consider
9 him to be a mentor of yours or --

10 A. I do now.

11 Q. Okay. Are there any other officers in
12 the department currently or retired you consider
13 to be your mentors as a police officer?

14 A. Yes. One of the first sergeants I ever
15 had was Sergeant Laura Suber. She's still a
16 sergeant. I've always considered her to be a
17 mentor.

18 Q. Okay. Anybody else?

19 A. As far as mentors? I don't believe so.

20 Q. Okay. How about friends in the
21 department, people that you hang out with,
22 socialize with, have that kind of relationship
23 with, do you have friends in the department?

24 A. Friends, yes, I have friends.

1 Q. Okay. Who would you say are your
2 closest friends in the department?

3 A. Laura Suber. Sergeant Shantey Boxill.
4 Commander Rhonda Grizzell. Lieutenant LuEllen
5 Kuykendoll. Let me think. I think that's the
6 core group of people that I would consider my
7 friends on the division.

8 Q. Okay. What's your -- what's been your
9 professional or personal experience with Ken
10 Decker?

11 A. Professional.

12 Q. Okay.

13 A. He was a sergeant in internal affairs
14 when I was the commander of internal affairs.

15 Q. Okay. Was he already there when you
16 came on --

17 A. Yes.

18 Q. -- to internal affairs?

19 Okay. Do you remember how long he had
20 been on internal affairs before you got there?

21 A. No. He was relatively tenured, though,
22 I do remember that.

23 Q. Okay. Did you have a good experience
24 with Sergeant Decker?

1 A. I thought he was very competent.

2 Q. Honest?

3 A. Yes.

4 Q. Did you ever have to discipline him for
5 anything or approve discipline of him?

6 A. I don't recall any.

7 Q. Okay. Who was the sergeant between you
8 and -- I'm sorry, the lieutenant between you and
9 Sergeant Decker?

10 A. Lieutenant Mike Deakins, I believe --

11 Q. Okay.

12 A. -- was the lieutenant out there.

13 Q. Okay. What -- same questions about
14 Lieutenant Deakins, reliable, honest, that kind of
15 thing?

16 A. Yes. Yes.

17 Q. Okay. Sergeant Decker has described to
18 us a sort of situation in internal affairs, I
19 guess traditionally or regularly, where a lot of
20 times the commander of IA would have a more
21 supervisory or more direct supervisory control
22 over investigations that a sergeant was doing than
23 a lieutenant, that the lieutenant often got sort
24 of skipped in the chain of command, at least

1 informally. Does that sound right to you?

2 A. What's the question?

3 Q. The question is: Was it the -- was it
4 true in internal affairs, at least at the time
5 when you were in internal affairs, that you would
6 often have a lot of direct interaction with the
7 sergeants that were doing the investigations? And
8 at least for certain investigations, the
9 lieutenant might be a little more hands off?

10 A. So I will say it's true that I had a
11 lot of interaction with the sergeants that were
12 doing investigations, for most of the
13 investigations. I would have a lot of interaction
14 regarding their investigation regardless of what
15 level it would be. It's a very small group of
16 people. Those have to be signed and approved by
17 me. So when they would have questions, they were
18 welcome to come in and ask me directly. I always
19 tried to keep the lieutenants informed or in the
20 loop if there was decisions being made, but I
21 would say I had a lot of involvement in most
22 investigations, even very minor in nature.

23 Q. Okay. And the reason I ask is a lot of
24 times when we have depositions of police officers,

1 the emphasis is on the fact that you're in like a
2 paramilitary organization?

3 A. Chain of command.

4 Q. You have a chain of command, and
5 sergeants talk to lieutenants, lieutenants talk to
6 commander, that kind of thing. And the point is
7 that the way you're describing it, it's a little
8 looser in internal affairs because it's a small
9 group and the commander has a lot of hands on?

10 A. Correct. Correct. Our offices are
11 literally right next to each other. If the
12 lieutenant isn't available, the commander is the
13 next person that needs to be asked that question.
14 My signature would go on everything, so it
15 wouldn't make any sense to wait and ask a
16 lieutenant if they're off on vacation for two
17 days, so -- because of the proximity and the small
18 nature of that environment, I think it is a little
19 different dynamic than you would see in other
20 parts of the Division of Police. But the
21 lieutenants were always still very involved in
22 everything.

23 Q. Okay. And the other way that we've
24 heard that IA is a little bit different than a lot

1 of other units in the Columbus Division of Police
2 is that at least while Chief Jacobs was chief, the
3 commander of internal affairs would report
4 directly to the chief and not go through a deputy
5 chief; is that right?

6 A. Correct.

7 Q. Okay. How many officers were in
8 internal affairs when you were in charge of
9 internal affairs?

10 A. There were no officers there.

11 Q. Or I'm sorry, how many --

12 A. Sergeants.

13 Q. -- sworn police personnel were in --

14 A. Okay. So we had two lieutenants, I
15 believe there were 20 investigators, sergeant
16 investigators, and I believe there were four
17 individuals that were the intake sergeants. I
18 believe --

19 Q. Okay.

20 A. -- that was the number.

21 Q. The intake sergeants would deal with
22 civilian complaints?

23 A. That was purely intake. They did not
24 do investigations.

1 Q. Okay. But, I mean, they were taking
2 intake from civilians not like if it was an --

3 A. Internal?

4 Q. -- internal investigation?

5 A. Correct. There's a different process
6 for internals.

7 Q. What's the process for internals?

8 A. The correct process for an internal
9 complaint is to write a letter up your chain of
10 command. It will go all the way up your chain of
11 command to a deputy chief, who will then determine
12 if it comes to internal affairs or if it's
13 investigated by the chain of command.

14 Q. Okay. Is that how the Eric Moore
15 investigation started in 2014?

16 A. I don't remember.

17 Q. Okay. What is the first thing you
18 remember hearing about the Eric Moore
19 investigation?

20 A. I dealt with a lot of investigations
21 while I was there. I don't remember what the
22 first thing I heard was about that investigation.

23 Q. Okay. Do you remember that the
24 investigation had a number of different sort of

1 relatively unrelated threads, I guess I'll call
2 it?

3 A. Yes.

4 Q. Some of it had to do with overtime and
5 property and some of it had to do with
6 discrimination, equal employment opportunity,
7 retaliation, that kind of thing?

8 A. Yes.

9 Q. And then there were aspects of the
10 investigation that had to do with Sergeant Moore's
11 conduct while he was in SRB, and then some parts
12 of it had to do with his later conduct while he
13 was in narcotics?

14 A. Yes.

15 Q. Okay. Do you remember which part of
16 the investigation you became involved with first?

17 A. No, I do not.

18 Q. Okay. Is it typical at the beginning
19 of an internal affairs investigation that there
20 will be a decision made by the chain of command
21 about whether the officer under investigation will
22 remain on duty during the investigation?

23 A. It's not typical of every
24 investigation, no.

1 Q. Okay.

2 A. Just certain investigations where the
3 misconduct is -- has the appearance of being
4 critical in nature.

5 Q. Okay. What is critical misconduct?

6 A. Critical misconduct is a very --
7 actually a very vague term. It's misconduct that
8 is -- that is considered potentially terminable in
9 a lot of cases, or will result in departmental
10 charges or serious -- potentially serious
11 consequences.

12 Q. Okay. Can equal employment opportunity
13 policy violations be critical misconduct?

14 A. They can be.

15 Q. Okay. Retaliation for -- against an
16 officer who's a witness in an EEO investigation,
17 would that typically be critical misconduct?

18 A. It can be.

19 Q. Okay. Are there circumstances where it
20 would not be?

21 A. Well, when an allegation is brought
22 forth, we have to evaluate that allegation and see
23 if there's any evidence of it. The mere
24 allegation itself doesn't necessarily mean an

1 officer should be relieved of duty or it's termed
2 -- deemed critical misconduct. If there's
3 absolutely no evidence that this occurred or the
4 veracity of the claim is in question. Those
5 decisions are made at the level of chief or deputy
6 chief of police. So internal affairs does not
7 make those -- those decisions at all. Those are
8 just merely articulated to the deputy chief or the
9 chief of police.

10 Q. Okay. And I'm -- I know I had asked
11 you about leaving somebody on duty versus taking
12 them off duty during the investigation. But
13 I'm -- I sort of have -- I'm trying at least to
14 switch subjects a little bit to just what is
15 considered and isn't considered critical
16 misconduct.

17 And so my question is: You know, a
18 sustained allegation of retaliation against an
19 officer who's a witness in an EEO investigation,
20 are there any circumstances where that would not
21 be considered critical misconduct?

22 MR. COGLIANESE: Objection. Go ahead.

23 A. I can't say there is no circumstances.
24 Every single time we get a situation, it seems to

1 be a different set of circumstances, and those
2 have to all be evaluated. So I don't make those
3 decisions about whether an officer's relieved of
4 duty. I am merely conveying the information and
5 the evidence that we have at the time, so I'm not
6 weighing in on those decisions at all.

7 Q. Okay. I'm going to hand you what's
8 been previously marked as Plaintiff's Exhibit 10.
9 And I want you to take a moment and just take a
10 look at that document and let me know when you're
11 ready to answer questions about it.

12 A. Okay.

13 Q. Do you have an understanding of what
14 that document is?

15 A. It looks like an e-mail that details an
16 allegation that has come in. And Gary Cameron's
17 being notified that one of the individuals is -- I
18 believe Sergeant Moore must have worked for him at
19 the time. And he's being notified of the
20 information related to the allegations.

21 Q. Okay. And the purpose of the
22 notification -- first of all, the notification is
23 coming from Ken Decker?

24 A. Okay.

1 Q. Right?

2 A. Yes.

3 Q. Okay. And the -- it appears that the
4 purpose of the conversation between Commander
5 Cameron and Sergeant Decker was so that Commander
6 Cameron could determine whether Sergeant Moore
7 would remain on duty during the pendency of the
8 investigation?

9 MR. COGLIANESE: Objection. Go ahead.

10 A. It looks like he's advising him of the
11 investigation, some of the details of the
12 investigation or some of the allegations that are
13 being made and some of the details of the
14 allegations, and that Commander Cameron is
15 weighing in on some of that.

16 Q. Okay. And at the end of the chain,
17 which is the top of the page.

18 A. Yes.

19 Q. Commander Cameron is instructing
20 Sergeant Decker that he should keep him updated on
21 the investigation so that he can potentially
22 reconsider his decision to leave Eric Moore on
23 duty if more information comes to light?

24 A. Yes, uh-huh.

1 Q. And that includes an instruction that
2 if Sergeant Decker becomes aware of corroborated
3 allegations that would constitute critical
4 misconduct, he should let Commander Cameron know?

5 A. Yes. That's what it looks like he's
6 saying.

7 Q. So at least for Sergeant Decker, he was
8 in a position where he would need to have some
9 understanding of what critical misconduct would be
10 to let Commander Cameron know what -- know that,
11 right?

12 MR. COGLIANESE: Objection. Go ahead.

13 A. I would believe that he would have to
14 have an understanding of -- he was an experienced
15 and tenured internal affairs investigator. He's
16 dealt with this stuff before. I'm sure he
17 would -- if he had any questions, he would ask.

18 Q. Okay. And you also had that sort of --
19 at least a basic understanding of what a
20 commanding officer would mean when they said,
21 corroborated allegation of critical misconduct?

22 A. Yes.

23 Q. Okay. Sergeant Decker informed you of
24 this communication with Commander Cameron?

1 A. I don't recall. I'm not on the
2 e-mail --

3 Q. Okay.

4 A. -- chain here, so I don't recall if I
5 was advised or not. I see that Ron Gray is copied
6 on this, but I don't recall if I was advised of it
7 at all.

8 Q. But you were aware at the time that at
9 least in Deputy Chief Gray's chain of command, his
10 desire and the desire of the officers under his
11 command was that if there was an officer being
12 investigated in their chain, they wanted to be
13 kept updated on the investigation so they could
14 make decisions about relief of duty?

15 A. Okay. My instruction comes from the
16 chief of police, that's who I report to. Any
17 additional information -- if a deputy chief has
18 questions or anything about an investigation to a
19 certain degree, I would convey that information.
20 I would go to executive staff on occasion and give
21 them an overview of cases in general, but I
22 reported directly to Chief Jacobs, so I would keep
23 her informed of everything.

24 And if she, at some point, wanted me to

1 provide additional information to a deputy chief
2 that I shared with her, I would absolutely do so
3 and did --

4 Q. Okay.

5 A. -- at some point.

6 Q. If Deputy Chief Gray came to you about
7 an investigation without going through Chief
8 Jacobs and said, can you tell me what's going on
9 with such and such officer in my chain of command,
10 what would your response to that be?

11 MR. COGLIANESE: Objection. Go ahead.

12 A. I believe my response would have been
13 to provide him the information I could.

14 Q. Okay. Did you have conversations with
15 Deputy Chief Gray where he let you know that he
16 wanted to be kept informed about the --

17 A. I don't recall.

18 Q. And I'm sorry, I'm going to -- that one
19 was a little bit of an exception, but we do need
20 to be careful as we go through the deposition.
21 I'm the type of person who sometimes takes a while
22 to get to the end of my question.

23 A. Okay.

24 Q. And so far it seems like you pretty

1 much stick to the point, but I'm going to try not
2 to interrupt your answers, and if you could try to
3 let me get to the end of the question --

4 A. Absolutely. Continue.

5 Q. -- before you answer.

6 You just did it again.

7 Okay. So you don't recall one way or
8 the other whether Deputy Chief Gray told you at
9 any point that he wanted to be kept informed as a
10 general matter about any investigations that were
11 going on within his chain of command?

12 A. I do not recall specifically.

13 Q. Okay. Meaning it could have happened,
14 but you don't remember it if it did?

15 A. Correct.

16 Q. Okay. Do you remember Deputy Chief
17 Gray or Commander Cameron coming to you about this
18 particular investigation, the Sergeant Moore
19 investigation, and asking you for information
20 about its status?

21 A. I do not recall any particular times.

22 Q. Okay. As a general matter, if you
23 became aware during the course of one of your
24 sergeant's investigations of new information that

1 would corroborate an allegation of critical
2 misconduct or some new allegation that might
3 warrant taking the officer off of active duty,
4 what was your practice?

5 MR. COGLIANESE: Objection. Go ahead.

6 A. The investigators in internal affairs
7 are dealing with these cases every single day.
8 They are expected to notify their lieutenant or
9 myself if they come across any additional evidence
10 or information that changes the course of the
11 case, and that would be included in that.
12 Evidence that would indicate that the misconduct
13 was more serious than previously believed or
14 evidence to support critical misconduct, that
15 would be brought to us. My next course of conduct
16 would be to review that and then take it to my
17 boss, Chief Jacobs, and brief her. Or if she
18 wanted me to brief the deputy chief involved and
19 say, this is what we have, this is the type of
20 evidence, this is the direction or course that
21 this has taken. And then the decision to relieve
22 somebody of duty or make any changes regarding
23 their status would be hers.

24 Q. Okay. Do you remember any discussions

1 with anyone about whether Eric Moore should remain
2 on duty during the course of his internal affairs
3 investigation?

4 A. That particular investigation was ever
5 evolving. So there was repeat -- every time we
6 interviewed an individual, there would be
7 additional allegations brought forth, so this
8 particular investigation grew exponentially over a
9 period of time. There were constant changes.

10 And I don't remember a specific
11 conversation, and I don't remember with who, but I
12 do remember having these discussions every time
13 evidence or new allegations came to light what --
14 how do we proceed from this point? This
15 particular investigation branched off into so many
16 different areas that this conversation had to
17 happen repeatedly. Not just between me and the
18 investigator or the lieutenant, but me and the
19 chief of police as well, and whoever else in the
20 chain of command she felt it was necessary to
21 involve.

22 Q. Okay. So you remember multiple -- I
23 mean, maybe not remembering specific times that
24 they happened or the specific incidents, but you

1 remember having multiple conversations with Chief
2 Jacobs updating her on the evolving nature of this
3 investigation?

4 A. Correct.

5 Q. Okay. Do you remember any of those
6 conversations involving the question of should
7 this guy still be supervising other officers?
8 Should this guy still have a gun and badge?

9 A. I believe that was the context of some
10 of those conversations.

11 Q. Now, it was the case in Eric Moore's
12 investigation that he was not relieved of duty
13 until after internal affairs completed the
14 investigation and issued a report?

15 A. I believe that was the case.

16 Q. Okay. Do you have an understanding of
17 why that was?

18 A. As we made decisions at different
19 junctures relative to the evidence and the
20 veracity of the evidence and whether we could
21 prove allegations that were relatively stale in
22 nature, being several years old, a lot of those
23 things we had to properly vet. So just because an
24 allegation is made several years later, doesn't

1 mean we have evidence to support it.

2 And so as we were making those
3 decisions along the way, each time he's -- if he's
4 not relieved of duty and he's still supervising
5 individuals, first of all, that's not my decision
6 to make. But I do believe that when the
7 investigation was done in the end, it was the
8 totality of the circumstances for the entire
9 investigation, it was something like 200 pages,
10 that led that decision to culminate in him being
11 relieved of duty.

12 Q. Okay. I want to go back to -- I mean,
13 I understand what you're saying in terms of it not
14 being your decision. I mean, the chain of command
15 is who decides whether to take somebody off of
16 active duty?

17 A. Correct.

18 Q. But did Chief Jacobs give you any
19 understanding of why she had decided not to take
20 him off of active duty until the end of the
21 investigation?

22 A. I don't recall her sharing with me why
23 she made the decision.

24 Q. Okay. Other than just one-on-one

1 conversations with Chief Jacobs as your
2 supervisor, I think you said you also would update
3 the executive staff about different
4 investigations?

5 A. Yes.

6 Q. Do you remember updating the executive
7 staff about this investigation as it went forward?

8 A. I don't recall the dates that I would
9 come to executive staff. That would be at her
10 request. It was usually on a monthly basis. I
11 would have a list of cases that were of interest
12 to them, and I would come and discuss that. I
13 don't really remember what dates, and I don't
14 remember if this particular case was on the list,
15 but I would assume it would be.

16 Q. Do you know whether somebody kept
17 minutes of executive staff meetings?

18 A. There are minutes of executive staff
19 meetings kept. They don't go into a lot of
20 details, because they're -- they're public record.
21 And we also allow officers to review what we
22 discussed at executive staff, so we're not going
23 to put a bunch of details about ongoing
24 investigations in there. But I do not have copies

1 of any of those.

2 Q. Did somebody keep attendance of
3 executive staff meetings? Would that at least
4 appear in the minutes?

5 A. I believe they have an attendance log
6 for that.

7 Q. Okay.

8 A. I just haven't --

9 Q. Who keeps that log?

10 A. That would probably be the chief's
11 secretary.

12 Q. Okay. At the time --

13 A. Tina Hundley.

14 Q. Okay. It was Tina Hundley throughout
15 this period of time?

16 A. I believe so.

17 Q. Okay. Do you remember any specific
18 discussion in executive staff meetings about the
19 question of whether Eric Moore should be remaining
20 on duty given some of the allegations and evidence
21 that had been collected against him during this
22 investigation?

23 A. I don't remember any specific
24 discussions.

1 Q. Okay. Other than executive staff
2 meetings and one-on-one discussions with Chief
3 Jacobs -- oh, I'm sorry, I -- Fred is reminding me
4 that -- so when you said you don't remember any
5 specific discussions with executive staff about
6 Eric Moore's duty status, do you mean you don't
7 remember it one way or the other? Like you don't
8 remember whether or not those discussions
9 happened?

10 A. I'm sure they did. It was -- if I
11 would come to executive staff with a list of
12 12 cases, I would go over each case briefly and
13 answer any questions. There would be some
14 discussion regarding the case at the table. I was
15 there to answer questions, so I don't remember any
16 specifics of any discussion. But it would be
17 normal for that discussion to occur at least
18 briefly in my presence.

19 Q. When would have been the earliest in
20 the investigation when those kinds of executive
21 staff discussions might have taken place?

22 A. I don't recall.

23 Q. What -- I'll ask a particular thing,
24 which is: So there were so many different parts

1 of this investigation, including some that were
2 under Deputy Chief's Quinlan's chain of command
3 and some that were under Deputy Chief Gray's chain
4 of command in narcotics. Do you remember there
5 being discussion about whether both of those
6 portions of the investigation should be handled
7 by -- under one chain or the other rather than
8 splitting them up or --

9 A. I don't remember that discussion.

10 Q. Okay. How about any discussion about
11 whether this should all just be one investigation
12 or whether it should be one investigation about
13 the narcotics part and one investigation about the
14 SRB part, or one investigation about the overtime
15 and property stuff and one investigation about the
16 EEO stuff? Did you have those kinds of
17 discussions?

18 MR. COGLIANESE: Objection. Go ahead.

19 A. So internally, we would probably -- in
20 an investigation like this, and I do recall us
21 looking at whether or not when these allegations
22 start coming forward, whether we should separate
23 them. We make the decision in internal affairs
24 whether or not we should separate them, should we

1 give them to an additional investigator there? Is
2 that going to make things more difficult? Is it
3 going to require additional interviews? Is it
4 going to be -- require more time? Are we going to
5 be doing things twice? A lot of those types of
6 things are what we consider when we do that.

7 I remember this particular
8 investigation being something that every time we
9 would get a new course of allegations that we
10 would have to pursue, that we would have to
11 evaluate the best way to handle that and we would
12 look at that. We left Ken Decker on this because
13 it involved all the same people, all the same
14 interviews. And every time we had an interview
15 with that particular person, there was a new set
16 of allegations is what it appeared. And so we
17 felt like bringing in a brand new investigator, at
18 this point, separating it would make it difficult.
19 I think that this investigation as a whole had to
20 be read as an entire investigation separated into
21 sort of blocks, which is what we did with this
22 investigation.

23 Q. Okay. And you've mentioned -- I mean,
24 it -- I'm sensing a little bit of maybe

1 frustration in your voice, although you and I
2 don't know each other, so I'm using my intuition
3 here, I guess. But -- about every time you
4 interviewed somebody, there would be new
5 allegations and you have to go into the
6 allegations and it would develop further from
7 there.

8 It's also the case about this
9 investigation that a whole lot of those
10 allegations that came up in the middle of
11 interviews about something else turned out to be
12 sustained; that they -- those were allegations of
13 actual misconduct that ended up being found
14 against Sergeant Moore, right?

15 A. I don't recall the exact allegations,
16 and I don't recall the outcome of each one, but I
17 believe there were things that -- along the way
18 when we were -- it was brought to our attention
19 were required to investigate those. Whether they
20 appeared to have any kind of nexus to the original
21 complaint or not when misconduct is brought to
22 internal affairs, we have to go and investigate
23 that. And I believe some of those were sustained,
24 I just -- I don't recall which ones, and I don't

1 recall the allegations or at what point they were
2 brought forward.

3 Q. Okay. But I guess my point is, it's
4 not like your time was being wasted here. The
5 investigation was growing because there were
6 credible allegations of some pretty serious
7 misconduct against Sergeant Moore?

8 A. I never indicated that my time was
9 wasted.

10 Q. Okay. In addition to sharing
11 information with the chain of command, with Chief
12 Jacobs and with the executive staff about the
13 general status of the investigation, did you
14 provide anyone from the chain of command specific
15 pieces of evidence, interview summaries, interview
16 recordings, that kind of thing during the
17 investigation?

18 A. I don't recall.

19 Q. Okay. One way or the other?

20 A. I don't believe I -- I don't believe
21 that occurred. I don't recall for sure, because
22 if it was requested and if the chief wanted me to
23 do that, I would obviously do that.

24 Q. Okay. You don't remember one way or

1 the other whether you were asked to provide any
2 evidence?

3 A. I do not recall.

4 Q. Okay. One of the allegations that
5 ended up being sustained against Sergeant Moore
6 was that he used racial slurs against black
7 officers and black people in general while on
8 duty. Do you remember that?

9 A. I remember that being an allegation. I
10 don't remember the outcome, and I don't remember
11 the evidence that would have sustained it if you
12 said it is sustained.

13 Q. Okay. Did you -- do you remember that
14 Sergeant Decker at one point interviewed several
15 officers from SRB, and several of them, both black
16 and white officers, reported hearing Sergeant
17 Moore describe Eric Cornett, for instance, as a
18 monkey or as an ape?

19 A. I remember that being an allegation.

20 Q. Okay. Do you remember that an officer
21 corroborated the original allegation?

22 A. I don't remember any of the details
23 regarding the evidence that supported the outcome
24 of any of those.

1 Q. Okay. If Sergeant Decker indicated
2 that he informed you when he did have
3 corroboration of that allegation, is there any
4 reason that you would have to dispute that?

5 A. No.

6 Q. Okay. Do you remember whether you
7 shared that information with the chain of command
8 at the time?

9 A. Chain of command being --

10 Q. Meaning the chief or the executive
11 staff?

12 A. The chief? Okay. I don't remember if
13 I did, but I would assume that I would share that
14 information. So when we come to the point where
15 we get information that is sustained or we have
16 evidence, I would have brought that to the chief.

17 Q. Okay. Do you remember that there was
18 an allegation against Sergeant Moore that in a
19 particular conversation -- first of all, you
20 remember the source of the original allegations
21 against Sergeant Moore was Officer Wes Sorrell?

22 A. Yes.

23 Q. Okay. Who was also under
24 investigation?

1 A. Yes.

2 Q. As part of this same investigation?

3 A. Yes.

4 Q. You remember that Officer Sorrell
5 indicated that there was a conversation with
6 Sergeant Moore and he believed that there was an
7 officer named Scott Watkins who was also in
8 attendance? And Sergeant Moore, in that
9 conversation, used a racial slur against Officer
10 Eric Cornett and Sergeant Doug Williams calling
11 them apes or monkeys and saying that he was going
12 to take them out about back and kill them or take
13 them out back and shoot them or something along
14 those lines?

15 MR. COGLIANESE: Objection.

16 Q. Does that all sound familiar?

17 A. So this sounds like an allegation that
18 we dealt with, yes.

19 Q. Okay. A serious allegation, you've got
20 a discrimination concern here with racial slurs
21 and also a threat of violence against officers?

22 A. It's a serious allegation, yes.

23 Q. Okay. And if it was sustained, it
24 would certainly be critical misconduct?

1 A. I believe so.

2 Q. Okay. I'm -- I guess I'm going to show
3 you what's been previously marked as Plaintiff's
4 Exhibit 11, which is Sergeant Decker's interview
5 summary of Officer Watkins about this allegation.
6 And it indicates that he interviewed Officer
7 Watkins on December 5th, 2014, which -- I mean,
8 that was in the scope of this investigation,
9 actually fairly early in the investigation, right?

10 A. Uh-huh.

11 Q. Sorry, you have to say yes or no.

12 A. I'm sorry, what was the question?

13 Q. That this was fairly early in the
14 investigation?

15 A. Yes.

16 Q. Okay. I mean, I'll step back.

17 The time frame of the investigation, as
18 we understand it, was it started somewhere around
19 August of 2014. The charges were not actually
20 issued against Sergeant Moore until I think about
21 March of 2016.

22 A. Okay.

23 Q. It was a -- I mean, this was a fairly
24 lengthy investigation?

1 A. Yes.

2 Q. Okay. So this was just a couple months
3 into the investigation?

4 A. Yes.

5 Q. And at this point, Sergeant Moore was
6 still on duty as a sergeant?

7 A. Yes.

8 Q. Okay. And if you could take a look --
9 I'm sorry, I'm going to grab this back from you.

10 A. Okay.

11 Q. I guess if you could just take a couple
12 minutes and starting where the Post-it note is
13 here at the bottom of the third page of this
14 exhibit.

15 A. Yes.

16 Q. Can you just read through from that
17 point for the next couple paragraphs.

18 MR. COGLIANESE: Just for the record,
19 you're pointing to Bates 4524, it looks like the
20 last full paragraph at the bottom of that page?

21 MR. VARDARO: Right.

22 MR. COGLIANESE: Okay.

23 A. Okay.

24 Q. So at this point in Sergeant Decker's

1 investigation, you would agree that he has
2 corroboration from another officer that Sergeant
3 Moore has used racial slurs against another
4 officer, right?

5 A. From --

6 Q. From Officer Watkins?

7 A. Officer Watkins.

8 Q. Corroborating Wes Sorrell?

9 A. It appears he's corroborating some of
10 the racial slurs, yes.

11 Q. Okay. And he's also corroborating
12 the -- I guess the concept that Sergeant Moore was
13 making threats of physical violence against Eric
14 Cornett?

15 A. Yes. He's indicating that he believes
16 he would have taken him out in the parking lot.

17 Q. Okay. And it would not be -- I mean,
18 first of all, are you aware of any reason to --
19 that Officer Watkins would make this up?

20 A. No, I'm not.

21 Q. Okay. It would not be unusual for
22 officers describing an incident that wasn't
23 recorded on video or audio and it hadn't been
24 taken down specifically and so at the time they

1 might have different wording for a particular
2 conversation that happened?

3 A. Correct.

4 Q. Do you remember taking this
5 corroborating evidence to Chief Jacobs or the
6 executive staff at the time?

7 A. I do not recall.

8 Q. Okay. All right. Do you -- I mean,
9 when you say you don't recall it, and I'll keep
10 asking, you mean you don't remember whether you
11 did that or not?

12 A. I do not remember whether I did that or
13 not.

14 Q. Okay. Do you remember whether or not
15 Sergeant Decker informed you of this corroboration
16 at the time?

17 A. I do not remember whether he informed
18 me of the specifics of this at the time or not.

19 Q. Okay. What about in general?

20 A. I'm aware of this allegation, I just
21 don't remember exactly when we had the discussion
22 regarding this allegation.

23 Q. It would have been very unusual in the
24 course of this investigation and other

1 investigations that you were overseeing in
2 internal affairs that the officer, the sergeant
3 conducting the investigation would not inform you
4 of something along these lines within at least the
5 next couple of days, right?

6 A. I would expect them to inform me, I
7 just don't recall the exact discussion if he did
8 inform me of this.

9 Q. Okay. And you remember that Sergeant
10 Decker in particular in this investigation was
11 talking to you on --

12 A. A regular --

13 Q. -- a very, very regular basis about
14 this investigation?

15 A. Correct.

16 Q. In part because he was looking for
17 guidance from you about how far he could go with
18 certain parts of his investigation, but in part
19 just to keep you informed of it?

20 A. Correct.

21 MR. COGLIANESE: Objection. Go ahead.

22 Q. I think as he described it, if I'm
23 remembering it, he said it started off that he
24 would give you an update about this maybe every

1 week or so, but then as it went on, it became more
2 like daily. Does that sound right?

3 A. I don't think it was quite that
4 frequent. He would update me when he did
5 additional interviews depending on when those
6 were. He would sometimes not do any additional
7 interviews and have any additional evidence for a
8 few weeks at a time, so I don't believe it was
9 daily.

10 Q. Okay. I'll represent to you that at
11 this stage of the investigation, the stage where
12 he's interviewed Officer Watkins, Sergeant Decker,
13 first of all, on the same day interviewed another
14 officer named Larry Wilson, a black officer who
15 reported to Sergeant Moore. And then within a
16 couple of days after that, interviewed Officer
17 Shaw and Officer Whitney Lancaster, all of whom
18 made allegations against Sergeant Moore about
19 different racial or violent conduct. Is that a
20 period of time when you would think that you would
21 have had pretty regular contact with Sergeant
22 Decker about the content of his interviews?

23 MR. COGLIANESE: Objection. Go ahead.

24 A. I believe so.

1 Q. Okay. Do you remember that Officer
2 Wilson, in particular, confirmed that he had
3 personally heard Sergeant Moore also make threats
4 about putting Officer Cornett in his place and
5 potentially beating him up?

6 A. I don't recall specifically.

7 Q. Okay. But you wouldn't deny that you
8 learned that during the investigation?

9 A. I don't recall that allegation
10 specifically.

11 Q. But because you don't recall it, that
12 doesn't mean you don't think it happened, it's
13 just that you don't remember the details at this
14 point?

15 A. I don't remember.

16 Q. Okay. Do you remember that Officer
17 Wilson told Sergeant Decker that he had been in
18 Sergeant Moore's presence at points when people
19 had asked Sergeant Moore directly whether he made
20 these statements about Eric Cornett and Sergeant
21 Moore did not deny them?

22 A. Could you clarify that question a
23 little?

24 Q. Sure. I mean, one of the -- a lot of

1 times officers will talk to each other about
2 different things whether they did them or not,
3 right? I mean, that's pretty typical in the
4 Columbus Division of Police that officers will
5 talk to each other about events?

6 A. Yes.

7 Q. Okay. Starting at a very basic level.
8 And if an officer goes to another officer and
9 says: Is it true that you did X, Y and Z, and the
10 officer just doesn't even respond, that a lot of
11 times people will sort of take that as what we
12 would call a tacet admission?

13 MR. COGLIANESE: Objection. Go ahead.

14 Q. Does that sound right? Does that
15 sound --

16 MR. COGLIANESE: Objection.

17 A. I would believe that would happen.

18 Q. Okay. Well, you've investigated crimes
19 before I assume, many dozens and hundreds of
20 times?

21 A. Yes.

22 Q. Okay. When you go to a suspect, I
23 understand they have the right to remain silent
24 and all of that, but if you went to the suspect of

1 a crime and said, did you rob this house or
2 something like that, and the suspect doesn't even
3 answer you, don't you take some meaning from that?

4 MR. COGLIANESE: Objection.

5 A. Generally I would take something from
6 that.

7 Q. It would be suspicious at minimum?

8 A. Yes.

9 Q. And so what I'm asking you is: Do you
10 remember that Officer Wilson told Sergeant Decker
11 that he had had conversations with Sergeant Moore
12 where he and others had asked Sergeant Moore
13 whether he had committed this -- these racial
14 slurs and threats and Sergeant Moore had not
15 answered? Rather than denying it, he had just not
16 answered?

17 MR. COGLIANESE: Objection. Go ahead.

18 A. I don't remember ever having that
19 conversation.

20 Q. Okay. Does that mean you think it
21 didn't happen?

22 A. No, it does not mean that.

23 Q. Okay. Would that be another form of
24 corroboration of the allegations by Officer

1 Sorrell, that Sergeant Moore was reluctant to even
2 deny the allegations?

3 MR. COGLIANESE: Objection. Go ahead.

4 A. I don't believe a failure to answer
5 relayed through another party would be a form of
6 corroboration that internal affairs should weigh
7 very heavily.

8 Q. Okay. Would it be something that would
9 be considered at all?

10 A. Possibly.

11 Q. Okay. Do you remember that at the
12 conclusion of Sergeant Decker's investigation of
13 Eric Moore, the allegation that Sergeant Moore had
14 made a death threat against Eric Cornett and
15 Sergeant Williams was concluded as not sustained?

16 A. I believe so. I don't recall specific
17 outcomes of allegations.

18 Q. Okay. Do you remember -- well, first
19 of all, I'll represent to you, I don't think
20 there's any dispute in this case, that allegation
21 was concluded by IAB and upheld by the chain of
22 command as not sustained?

23 A. Okay.

24 Q. But there was no allegation in the

1 internal affairs investigation one way or the
2 other, and no conclusion because there was no
3 allegation that Sergeant Moore had made some
4 threat of physical violence against Eric Cornett,
5 whether or not it was a death threat. Do you
6 remember why there was no allegation of a threat
7 short of a death threat?

8 A. No.

9 Q. Okay. Certainly taking what Officer
10 Sorrell had alleged and adding to it Officer
11 Watkins' description here, there would be
12 sufficient evidence to sustain an allegation that
13 Sergeant Moore had made a threat?

14 MR. COGLIANESE: Objection. Go ahead.

15 A. Based on what's written here?

16 Q. Yes.

17 A. I don't think based on what's written
18 here we would necessarily sustain an entire
19 allegation.

20 Q. Okay. What would lead -- what would
21 hold you back from it?

22 A. I do not know.

23 Q. Okay.

24 A. But merely one party making a statement

1 is not the only thing that we weigh in sustaining
2 an allegation.

3 Q. Okay. What -- I mean, first of all,
4 let's say there are -- let's just assume, because,
5 again, I don't think it's in dispute, multiple
6 other officers confirmed that Sergeant Moore was
7 in the habit of saying that he was going to do
8 something violent to Eric Cornett, beat him up,
9 shoot him, whatever. Sergeant Moore denied it,
10 but you got three or four officers, at least,
11 saying that they heard him say something to that
12 effect. Would that be typically enough to sustain
13 the violation?

14 MR. COGLIANESE: Objection. Go ahead.

15 A. We would evaluate each statement, the
16 veracity of each statement, the credibility of
17 each officer, and we would make a decision based
18 on that.

19 Q. Okay. Do you remember in this
20 investigation -- first of all, you remember that
21 there was ample reason to doubt the veracity of
22 Sergeant Moore's testimony, right?

23 MR. COGLIANESE: Objection. Go ahead.

24 A. I believe -- I believe we did doubt the

1 veracity of some of his statements.

2 Q. Do you remember Sergeant Decker saying
3 to you and many other people during the
4 investigation that pretty much every word out of
5 his mouth was a lie?

6 A. I remember Sergeant Decker being
7 concerned that much of what he was telling us was
8 not truthful. And I do remember discussions, as
9 would be typical, as to whether or not his
10 statements could be proven to be untruthful.

11 Q. Okay. But there was certainly a reason
12 to doubt their truth?

13 A. Yes.

14 Q. Okay. And there was similar -- you
15 know, there was some concerns, I guess at the
16 beginning of the investigation, that Officer
17 Sorrell might have a motive to try to get Sergeant
18 Moore in trouble and so that he might not be -- he
19 might not take everything he said at face value?

20 A. I believe so.

21 Q. Okay. Do you remember any other
22 officer that that kind of discussion took place
23 about during this investigation besides Moore, the
24 sort of principal people involved, Moore and

1 Sorrell? Was there any reason to think that other
2 officers were purposefully making false
3 allegations?

4 A. I don't remember if we discussed --

5 Q. I'm sorry, I'm just going to finish my
6 question and let you get into it.

7 Did you have -- did you have
8 discussion -- I'll just rephrase the whole thing.

9 Did you have discussions with Sergeant
10 Decker or others about any other particular
11 officer having a reason to make up false
12 allegations against Sergeant Moore?

13 MR. COGLIANESE: Objection. Go ahead.

14 A. I don't recall. But it is a normal
15 course of business during an investigation to
16 discuss the veracity of every witness and every
17 focus in an investigation.

18 Q. Okay. But you don't remember
19 specifically any officer besides Moore or Sorrell
20 that there was any particular concern about their
21 honesty or --

22 A. I do not remember.

23 Q. Okay. If there was -- well, first of
24 all, it would violate CPD rules for an officer to

1 make a threat of violence against another officer?

2 A. Correct.

3 Q. And it would be a pretty serious
4 violation?

5 A. Correct.

6 Q. And that would be true whether it was a
7 threat of violence through fists or beating and
8 not just a threat through a gun?

9 A. Correct.

10 Q. Okay. It would be even more serious if
11 the threat was made using racial terms?

12 A. Correct.

13 Q. And that would certainly be considered
14 something that would be critical misconduct, a
15 racial threat of violence against another officer?

16 A. Correct.

17 Q. Did you have discussions with Chief
18 Jacobs or anybody else in the executive staff
19 about charging Sergeant Moore with the threat of
20 physical violence against Eric Cornett?

21 MR. COGLIANESE: Objection. Go ahead.

22 A. I don't recall the details of my
23 conversations with her or executive staff.

24 Q. Okay. Certainly going back to

1 Commander Cameron's e-mails with Sergeant Decker
2 where he had asked to be updated about
3 corroborating evidence of critical misconduct.
4 Getting evidence corroborating a threat of
5 physical violence against Eric Cornett using
6 racial terms, that would certainly fall into the
7 description of what he was asking for?

8 MR. COGLIANESE: Objection. Go ahead.

9 A. I believe that's what he's asking for.

10 Q. Okay. Do you know whether Sergeant
11 Decker informed Commander Cameron of the
12 corroborating evidence he had of the threat
13 against Eric Cornett?

14 A. I do not know.

15 Q. Okay. Did you have discussions with
16 Sergeant Decker where you told him not to update
17 Commander Cameron until the investigation was
18 concluded?

19 A. I don't believe so.

20 Q. Okay. If Sergeant Decker says that you
21 told him to wait until the allegations were either
22 determined as sustained or not sustained before
23 talking to anybody in the chain of command about
24 it, would you dispute that?

1 MR. COGLIANESE: Objection. Go ahead.

2 A. I don't recall ever having that
3 conversation. It is a normal course of business
4 for us to -- at some level, to discuss with the
5 chain of command where investigations are going.
6 This is a two-year long investigation, so I doubt
7 that there was any point where I said we're not
8 talking to the chain of command for two years.

9 We had regular discussions with the
10 chief of police, and executive staff was kept
11 abreast of where we were on this case. So I don't
12 recall ever telling Sergeant Decker that we were
13 not going to discuss anything until this case was
14 completed.

15 Q. Okay. Is it possible that you would
16 have told him not to go directly to Commander
17 Cameron as Commander Cameron had asked because you
18 knew that you were sharing the information with
19 the higher up levels of the chain of command?

20 MR. COGLIANESE: Objection. Go ahead.

21 A. That would be normal. There are lots
22 of times as a normal course of business where we
23 do not directly share things with the chain of
24 command, because during the course of an ongoing

1 investigation, we don't want any leaks, we don't
2 want -- we don't know who has relationships with
3 other individuals. There's a reason the commander
4 reports directly to the chief of police. These
5 types of investigations are one of those reasons.
6 So a lot of times we provide very little
7 information to a chain of command in a serious and
8 long-term investigation other than the status of
9 what we're doing.

10 Q. Okay. So that would fit with your --
11 at least with your practice, even if you don't
12 remember one way or the other whether the
13 conversation occurred, that you might have told
14 Sergeant Decker, we're not going to share this
15 with the commander, but I'm going to go higher up?

16 A. Correct.

17 Q. Okay. You told Sergeant Decker at some
18 point during the investigation -- well, first of
19 all, do you remember Sergeant Decker coming to you
20 approximately March of 2015 and telling you that
21 he had been informed by Officer Shaw of some new
22 allegations against Sergeant Moore, including
23 mishandling of a narcotics -- filling the
24 narcotics assignment, a threat that Sergeant Moore

1 had made against an officer named Dick Elias, and
2 also that Sergeant Moore was under investigation
3 by the ATF for purchasing an illegal weapons
4 enhancement?

5 A. I remember discussions about additional
6 allegations related to those topics.

7 Q. Okay. Do you remember that Officer
8 Shaw was the source of the allegations?

9 A. No.

10 Q. Okay. But you remember Sergeant Decker
11 relaying them to you?

12 A. Correct.

13 Q. You remember that they were all at the
14 same time?

15 A. I don't recall the time frame, but I do
16 remember the -- the nature of the allegations.

17 Q. Okay. And they came to you at a point
18 when Sergeant Moore was still on duty, because the
19 investigation hadn't concluded?

20 A. Yes, correct.

21 Q. So he hadn't been taken off duty.

22 Do you remember telling Sergeant Decker
23 that he was not to investigate the Dick Elias
24 threat incident?

1 A. No, I don't remember that.

2 Q. Okay. Would you deny that you told
3 Sergeant Decker he did not have authority to
4 follow up on that?

5 A. I would state that he has authority to
6 follow up on any allegations. I'm not familiar
7 with the Dick Elias threat.

8 Q. Okay.

9 A. I don't recall that one. Investigators
10 have a lot of latitude in how they follow up on
11 allegations that are brought forth during the
12 course of an investigation. It would not be for
13 me to say, you're not going to follow up on
14 something.

15 Q. Okay. Putting you aside, if a sergeant
16 in IAB is investigating something and they go to
17 their commander and say, can I add this to the
18 investigation, and the commander says, no, you may
19 not, they no longer would have authority to do it,
20 right? Because their commander has told them not
21 to?

22 A. Yes. If their commander says, yes,
23 that specifically does not belong in this
24 investigation, it would not be included.

1 Q. Okay. Just to refresh your memory, the
2 Dick Elias incident involved Officer Elias --
3 first of all, do you know who Dick Elias is?

4 A. No.

5 Q. Okay. I'll represent to you Officer
6 Elias is a Hispanic officer. He apparently, from
7 the information we've been shared, reported an
8 incident in which he was walking down a hallway or
9 coming around a corner and Sergeant Moore saw him
10 and reached for his weapon. Do you remember that?

11 A. I do remember -- I do remember having a
12 discussion about that particular allegation.

13 Q. Okay. And the report, as it came to
14 Sergeant Decker, was that Officer Elias had
15 reported that incident to Lieutenant Brust who was
16 Sergeant Moore's direct supervisor --

17 A. Uh-huh.

18 Q. -- and that nothing was really done
19 about it. And that's what was reported to
20 Sergeant Decker. Does that sound familiar?

21 A. So I remember the allegation being
22 brought forth at some point during the course of
23 this particular investigation. I do not remember
24 if it was previously reviewed and potentially

1 investigated by the chain of command. I remember
2 us having a discussion about the actions and the
3 nature of the allegation. And I remember that it
4 was an incident that occurred in a hallway between
5 two individuals, and the one individual put his
6 hand on his weapon, no weapon was drawn or removed
7 from the holster. And I don't recall if --
8 remember -- I don't remember any statements,
9 threatening statements being made at the same
10 time.

11 Q. Do you remember how you got all of that
12 information?

13 A. I believe it was relayed to me verbally
14 through Sergeant Decker.

15 Q. Okay. Do you -- well, I'll just --
16 we'll just start using the exhibit. I'm going to
17 hand you what's previously been marked as
18 Exhibit 52, which I'll represent to you is one of
19 Sergeant Decker's chronologies related to this
20 investigation.

21 If you could turn to the portion of it
22 that is dated March 2015. And, again, it's not in
23 his chronology, but I'll represent to you that
24 this allegation came to Sergeant Decker's

1 attention approximately March 13th -- or I'm
2 sorry, March 16th. In the portion where it says,
3 also spoke with Officer Shaw about his new
4 allegations?

5 A. Yes, I see that one.

6 Q. Okay. This was one of those new
7 allegations, the Elias incident. And Sergeant
8 Decker indicates that he then met with Lieutenant
9 Deakins and with you to brief you on the new
10 allegations. And then on March 18th, it indicates
11 that he spoke to you again and you read a
12 follow-up interview that Sergeant Decker had with
13 Officer Shaw and told him that he was only to
14 follow up on the text message, which we'll get to
15 in a minute, and the ATF investigation, but that
16 the remainder of his concerns would not be
17 investigated.

18 Does that refresh your recollection at
19 all that you told Sergeant Decker not to follow
20 up?

21 A. I don't recall the context of that
22 discussion with Lieutenant Deakins or what details
23 and evidence we discussed regarding that decision
24 at all.

1 Q. Okay. But that doesn't mean that you
2 would dispute Sergeant Decker's chronology about
3 this point or his memory about it?

4 A. That -- I would not dispute that we had
5 a conversation about it and that we made a
6 decision at some point based on what we had in
7 evidence to pursue one course of investigation and
8 not to pursue another.

9 Q. Okay. When you say, we made the
10 decision, it was you that made the decision?

11 A. Well, I'm not the final decision-maker,
12 but I don't have all the facts, so it's usually a
13 round table discussion between myself, Sergeant
14 Decker and the lieutenant.

15 Q. Okay. Sergeant Decker says that he
16 wanted to and felt that he needed to pursue that
17 course of investigation further. Would you
18 dispute that?

19 MR. COGLIANESE: Objection.

20 A. What course?

21 Q. To further investigate the Elias
22 incident?

23 MR. COGLIANESE: Objection.

24 A. I don't recall what his position was.

1 Q. Okay. So going back to my question.
2 If he told us that he thought that they -- it
3 needed further investigation, you wouldn't dispute
4 him -- dispute that?

5 A. I would not dispute that he felt
6 further investigation might be needed.

7 Q. Okay. In which case it was -- would be
8 you and Lieutenant Deakins or just you that told
9 him that it wouldn't happen?

10 A. Correct.

11 MR. COGLIANESE: Objection.

12 Q. Okay. I'm going to hand you what's
13 been marked as Plaintiff's Exhibit 35 and ask you
14 to just read -- I'll withdraw that completely,
15 because I'm looking at the wrong exhibit.

16 MR. COGLIANESE: Jeff, while you're
17 getting organized, is now a good time for a break?

18 MR. VARDARO: Yeah, this is fine.

19 (A recess is taken.)

20 Q. I'm handing you what's been previously
21 marked as Plaintiff's Exhibit 26, and I've turned
22 it to the fourth page, which Rich will ask me to
23 confirm is Bates 004670. And I would like you to
24 read for yourself the paragraph next to the

1 Post-it note there, which is the --

2 A. Just this paragraph?

3 Q. Yes, the second -- I guess the second
4 full paragraph on the page.

5 You've read it now?

6 A. Yes.

7 Q. Okay. And if you flip just over to the
8 beginning of the exhibit, it indicates that this
9 is the informational summary Sergeant Decker made
10 of his conversation with Officer Shaw on
11 March 16th, 2015?

12 A. Yes.

13 Q. Okay. So this would be the information
14 that Sergeant Decker indicated he shared with you
15 in his chronology on March 18th?

16 A. I don't remember if he shared this
17 specific information, but --

18 Q. If you look --

19 A. -- it's stating --

20 Q. -- at March -- March 18th?

21 A. Let me look at it real quick.

22 Q. This is Exhibit 52 you're looking at,
23 just for the record.

24 A. Okay.

1 Q. Do you have any reason to doubt that
2 this is the informational summary that Sergeant
3 Decker shared with you on March 18th?

4 MR. COGLIANESE: Objection.

5 A. I don't have a reason to doubt that.

6 Q. Okay. And this informational summary,
7 just to summarize the paragraph you just read,
8 actually indicates that Officer Shaw told Sergeant
9 Decker that the Elias incident consisted of
10 Sergeant Moore not just putting his hand toward
11 his weapon, but actually drawing it part way out
12 of his holster, making a hand gesture toward
13 Officer Elias, and that Officer Elias went to
14 Lieutenant Brust about it and Brust didn't do
15 anything. And also Officer Shaw's sort of
16 analysis that he had the impression that Officer
17 Elias believed it was a racial incident?

18 MR. COGLIANESE:

19 Objection. Go ahead.

20 Q. All of those things are in this
21 paragraph.

22 A. Okay. And the question is?

23 Q. I'm just asking if you agree that all
24 of those things -- that's a fair summary of what's

1 in the paragraph?

2 A. Correct.

3 MR. COGLIANESE: Objection.

4 Q. So that's the information you had on
5 this incident at the time you instructed Sergeant
6 Decker that it should not be investigated further?

7 MR. COGLIANESE: Objection.

8 A. I don't recall what information I had
9 on that date. This would have been some of the
10 things that we discussed. We would have had a
11 conversation about that, so I don't remember what
12 else was shared when we made that -- when we had
13 that discussion, so I would believe that this is
14 not all the information that I had.

15 Q. Okay. What other information could you
16 have had at that point?

17 A. I do not know.

18 Q. Okay. Do you remember having a
19 discussion with Lieutenant Brust about this
20 incident at any point?

21 A. I did not have a discussion with
22 Lieutenant Brust.

23 Q. Okay. Did you have a discussion with
24 Sergeant Moore about it?

1 A. I did not have a discussion with
2 Sergeant Moore.

3 Q. Did you have a discussion with Dick
4 Elias about it?

5 A. I did not.

6 Q. Okay. Assuming that Sergeant Decker
7 also indicated that he did not talk to Lieutenant
8 Brust or Dick Elias or Sergeant Moore about this
9 particular incident at the time, is there any
10 other information that you can think of that you
11 would have had at that point to make a decision
12 about how to investigate it?

13 A. I would have looked at this particular
14 incident and I would have discussed this with
15 probably the lieutenant and Sergeant Decker
16 about -- because this is a summary of what
17 occurred. This isn't a word-for-word
18 conversation. I'm not listening to the
19 recordings. I'm going to ask for his impression.
20 I'm going to ask for him to bring in any
21 additional information that he believes is
22 relevant to this particular topic. We're going to
23 talk about the veracity of the witnesses when it
24 was reported, whether the chain of command may

1 have already investigated this. If it's brought
2 to a lieutenant, which is indicated that the
3 lieutenant was made aware, then it's possibly
4 already been dealt with. We would have discussed
5 all of those things most likely and made a
6 decision as to whether or not this particular
7 allegation was going to be included with all the
8 other allegations that we were investigating at
9 the time.

10 Q. Okay. What you're describing sounds to
11 me a little bit like an investigation, like that
12 you would talk to see whether it was investigated
13 by the chain of command, you would analyze the
14 veracity of witnesses, and some of the other
15 things. Do you have some recollection that
16 anything like that actually happened?

17 A. That's not --

18 MR. COGLIANESE: Objection.

19 A. -- what I'm attempting to explain is
20 that we would have a discussion about the details
21 of this. This is a summary. There's always more
22 information that you get from an investigator when
23 you have a conversation with them about the
24 direction of the investigation, how they feel

1 about the conversation they had with these
2 individuals in person when the allegations were
3 brought forth, all of those things. I'm having
4 that discussion with Decker and probably his
5 lieutenant and we're making a decision as to
6 whether this is yet another allegation that we
7 include in this investigation.

8 Q. Okay. And assuming that Sergeant
9 Decker, as I described it, and I don't -- again, I
10 don't think there's a dispute about this, Sergeant
11 Decker says he wanted to investigate this further
12 and you stopped him. So his -- his analysis of
13 his conversation with Officer Shaw was basically,
14 this is credible enough that I want to look into
15 it further. Given that or assuming that's true,
16 is there something else that would have stopped
17 you from doing it?

18 MR. COGLIANESE: Objection. Go ahead.

19 A. So a detective that brings their
20 opinion to the table, it's absolutely considered
21 and evaluated. And that doesn't mean that every
22 time they want to pursue a course of investigation
23 that we want them to do that.

24 Q. But when you say, "a detective," you

1 mean Sergeant Decker?

2 A. Yeah, an investigator, Sergeant Decker.
3 So every time somebody comes to the table and
4 says, well, I think we should investigate, this is
5 a roundtable discussion, we determine whether or
6 not we're going to move in that direction. With
7 this particular investigation, this was a common
8 occurrence every time we interviewed somebody. So
9 we had to evaluate every new allegation when it
10 occurred, and whether during the course of this
11 investigation, we wanted to include it in the
12 investigation that was now coming -- would end up
13 being two years plus to complete.

14 Q. Okay. Did you have any understanding
15 at the time of when this incident occurred?

16 A. I'm sure I did.

17 Q. Okay. Well, first of all, in the
18 paragraph of the -- that we were just reading,
19 Officer Shaw told Sergeant Decker that it was a
20 recent incident, recent encounter he had had with
21 Sergeant Moore?

22 A. Okay.

23 Q. Do you know whether you had anymore
24 specific information than that about when it

1 occurred?

2 A. I don't recall what I knew at the time.

3 Q. Okay. I mean, it seems like in order
4 to find that out, you would have to either talk to
5 Officer Elias or Lieutenant Brust or Sergeant
6 Moore, right?

7 A. Well --

8 MR. COGLIANESE: Objection.

9 A. -- if Sergeant Decker was informed as
10 to when it occurred, then we would already have
11 that information.

12 Q. Okay. This allegation was coming to
13 you during the middle of an investigation where
14 Sergeant Moore -- one of the principal allegations
15 against Sergeant Moore was he was making threats
16 against black officers, right?

17 A. That was one of the allegations.

18 Q. Okay. Did that factor at all into your
19 analysis of whether this incident was worth
20 including in the investigation since it's another
21 potential threat of violence against an officer of
22 color?

23 MR. COGLIANESE: Objection.

24 A. I can't -- I cannot tell you what

1 factored into my decision at this time.

2 Q. Okay. Sergeant Decker told Officer
3 Shaw shortly after this meeting, he describes it
4 in his chronology, that he was instructed by his
5 chain of command that he was not going to be
6 investigating the Elias incident. And that if
7 Elias wanted it investigated, he would have to
8 come in and make the allegation firsthand; that
9 there wasn't going to be a third-party complaint
10 on this.

11 A. Uh-huh.

12 Q. Does that refresh your recollection at
13 all about these discussions?

14 MR. COGLIANESE: Objection.

15 A. Not specifically, but that is a
16 mechanism that we use in situations when in
17 internal affairs we have individuals making
18 allegations about what they've heard from other
19 people. Third-party allegations, third-hand,
20 fourth-hand allegations are difficult for us to
21 deal with. The proper procedure for reporting
22 misconduct in the Division of Police is to put it
23 on paper and send it up through your chain of
24 command.

1 Q. Okay. If you get a secondhand or a
2 third-hand or whatever allegation from somebody,
3 and you decide you're only going to investigate it
4 if it comes firsthand, what is the procedure that
5 you follow to do that?

6 A. So in internal affairs, there's no
7 specific procedure. We look at it more on a
8 case-by-case basis. We try in a lot of cases
9 to -- if allegations that don't necessarily have a
10 nexus to the original complaint on an internal
11 investigation are brought forth during the course
12 of an interview, we try to deal with those if we
13 can.

14 There has been several instances where
15 that has not occurred. I think after this
16 particular case, because the way it expanded
17 exponentially every time someone was interviewed,
18 there was a multitude of additional allegations
19 brought forth that, you know, someone would be
20 interviewed and they would say, oh, yeah, well,
21 this person did this back on this date and this
22 person did this on this date.

23 Internal affairs has, since this case,
24 in a lot of situations moved towards requiring any

1 additional allegations be written down, either
2 firsthand or secondhand, be written down and sent
3 through the chain of command.

4 Q. Okay. I guess I was just asking if you
5 decided we're not going to investigate this unless
6 it's written down firsthand by the officer --

7 A. Uh-huh.

8 Q. -- how would you go about that
9 procedure? I mean, it wouldn't be -- I guess to
10 me as a layperson who's never worked in internal
11 affairs or any police department, it seems a
12 little strange to go to an officer level person
13 like Officer Shaw and tell him to go tell Officer
14 Dick Elias, who's not even in his unit and not --
15 certainly not within his chain of command, that if
16 he wants to make a complaint about something, he
17 should put it down on paper, otherwise it's not
18 going to be investigated. It would make more
19 sense to go to Officer Elias's chain of command
20 and have them have that conversation with him,
21 right?

22 MR. COGLIANESE: Objection. Go ahead.

23 A. Okay. So I don't recall what happened
24 in this particular circumstance, and I do not

1 recall how this was conveyed. I don't remember
2 the details of that. But we have several
3 different mechanisms for handling additional
4 complaints. And it would not necessarily mean
5 internal affairs would contact them and then
6 expect them to write it down, because that's then
7 an order from internal affairs to have them do
8 that.

9 If somebody's bringing forth an
10 allegation that they say somebody else is making,
11 then having that information conveyed to them, I
12 don't remember if Decker actually contacted
13 somebody specifically and said this is what you
14 need to do. I don't recall.

15 Q. Okay. You had no idea at the time
16 whether Officer Elias was aware of the other
17 allegation against Sergeant Moore about threats of
18 violence and that kind of thing, right?

19 A. I'm not aware.

20 Q. Okay. And you also know in -- from
21 your EEO training and your law school training and
22 things like that that a lot of times if people
23 feel like they're being discriminated against or
24 subjected to some kind of harassment or that sort

1 of thing, that they can be very reluctant to
2 report it?

3 MR. COGLIANESE: Objection. Go ahead.

4 Q. Don't you? Isn't that something you've
5 learned?

6 A. Yes.

7 MR. COGLIANESE: Objection.

8 Q. And you've learned that in IA also that
9 officers -- police officers can be reluctant to
10 bring complaints against other officers because
11 they know there can be repercussions?

12 A. I would say that's not necessarily
13 accurate.

14 Q. Okay. You think police officers are
15 pretty ready to bring internal complaints against
16 their --

17 A. I think we have evolved to the point
18 where police officers make allegations against
19 each other more often than citizens make
20 allegations against them.

21 Q. Okay. Do you think that's a good thing
22 or a bad thing?

23 MR. COGLIANESE: Objection.

24 A. I think that allegations that are --

1 baseless are a problem. Allegations that officers
2 coming forth with allegations that have some
3 foundation are a good thing.

4 Q. Were you involved in the
5 investigation -- I'm -- I actually don't have the
6 document with me at the time. Do you remember an
7 investigation involving an Officer Meinhart and an
8 officer named Smith-Hughes where Meinhart was
9 accused of drawing his weapon on Smith-Hughes or
10 starting to do that?

11 A. I don't recall.

12 Q. Okay. Assuming that it was a factor in
13 your analysis that Lieutenant Brust may already
14 have handled this at a chain of command level, the
15 Elias incident, again, Lieutenant Brust would not
16 have had all the information that internal affairs
17 had about other threatening conduct by Sergeant
18 Moore at the point when he would have handled
19 that, right?

20 A. That was a statement. What was the
21 question?

22 Q. No, it was a question, because I said
23 "right" at the end.

24 I really do mean to ask you: You

1 mentioned that one of the factors might have been
2 that you felt that Lieutenant Brust already
3 handled this in the chain of command level. Do
4 you remember saying that?

5 A. Yes.

6 Q. Okay. Lieutenant Brust would not have
7 had all the information that internal affairs had
8 about other allegations of threatening conduct by
9 Sergeant Moore, right?

10 A. Yes.

11 Q. Okay. The other -- the other -- well,
12 there are a couple other things that Officer Shaw
13 reported to Sergeant Decker at the same time, but
14 one of them that I think I mentioned in passing
15 what seems like hours ago was that Sergeant Moore
16 was being investigated by the ATF. Do you
17 remember that?

18 A. Yes.

19 Q. Okay. Do you remember that Sergeant
20 Decker followed up on that allegation and talked
21 to the ATF about that incident?

22 A. Yes.

23 Q. And that the ATF agent in charge told
24 Sergeant Decker that they had documentation

1 showing that Sergeant Moore had ordered the
2 illegal weapons enhancement; they interviewed
3 Sergeant Moore, Sergeant Moore told them that he
4 had not actually taken possession of it and they
5 dropped the investigation at that point because
6 they took his word for it as a police officer?

7 MR. COGLIANESE: Objection. Go ahead.

8 A. So the question is was I aware of --

9 Q. Did Sergeant Decker tell you that?

10 A. I don't remember exactly what Sergeant
11 Decker told me, but then we discussed whether
12 there was any illegal activity. It was determined
13 that there was no criminal conduct there. And
14 should we pursue that on our end if the ATF did
15 not believe that there was any criminal conduct
16 there.

17 Q. But you don't remember Sergeant Decker
18 telling you that the ATF didn't really conclude
19 that there was no criminal conduct? What they
20 concluded was they weren't going to prosecute it
21 because the person they were investigating was a
22 police officer and he was denying the conduct.

23 MR. COGLIANESE: Objection.

24 A. I don't remember that.

1 Q. Okay. Would you deny that he told you
2 that?

3 A. I will tell you what I recall from the
4 situation that when this was brought to me,
5 Sergeant Decker was to talk to the ATF and find
6 out exactly what the law was regarding this
7 particular device, whether or not it was illegal
8 for him to look at it, order it, possess it,
9 take -- take possession of it, what was illegal.

10 And my understanding was that he looked
11 at it, potentially ordered it, but never took
12 possession of it, never received that order. That
13 was my understanding that he -- there was nothing
14 illegal. And the ATF -- I was never aware -- I
15 believe, at the time I was never aware that they
16 merely took his word for something and didn't
17 actually investigate whether he took possession of
18 it. My understanding was that he did not take
19 possession of it and therefore they were not
20 pursuing anything, any criminal charges or
21 anything like that.

22 Q. Okay. So if Sergeant Decker were to
23 say that he told you that the only basis for the
24 ATF dropping this investigation was Sergeant

1 Moore's verbal denial that he took possession of
2 the device, you disagree with that?

3 A. I disagree with that.

4 MR. COGLIANESE: Objection.

5 Q. Okay. The fact that the ATF didn't --
6 didn't pursue this as a criminal charge against
7 Sergeant Moore, that wouldn't have prevented
8 internal affairs from investigating it as a
9 potential violation of CPD policies?

10 A. Correct.

11 MR. COGLIANESE: Objection.

12 Q. Would you agree that a sustained
13 allegation that Sergeant Moore ordered an illegal
14 weapons enhancement would be relevant to an
15 investigation where he was being accused of
16 threatening to shoot black officers?

17 MR. COGLIANESE: Objection.

18 A. I don't necessarily believe that his
19 interest in this particular component indicated --
20 or was -- clearly had a nexus to this particular
21 investigation.

22 Q. I'm sorry, is that -- you re-worded it
23 a little bit. Are you saying that, no, you don't
24 agree that a sustained allegation that Sergeant

1 Moore ordered an illegal weapons enhancement would
2 be relevant to an investigation where he was being
3 accused of threatening to shoot black officers?

4 MR. COGLIANESE: Objection.

5 A. I will say that this particular
6 allegation that came to us, it wasn't clear that
7 there was a nexus to this investigation when we
8 became aware of this allegation.

9 Q. I understand that answer. But I still
10 would like you to answer the question I asked,
11 which is: Would you agree that a sustained
12 allegation that Sergeant Moore ordered an illegal
13 weapons enhancement would be relevant to an
14 investigation where he was being accused of
15 threatening to shoot black officers?

16 MR. COGLIANESE: Objection.

17 A. Not necessarily.

18 Q. Would you agree that a sustained
19 allegation that Sergeant Moore ordered an illegal
20 weapons enhancement -- or actually I'll re-word
21 this a little bit.

22 Would you agree that credible evidence
23 that Sergeant Moore ordered an illegal weapons
24 enhancement would be something that the chain of

1 command might want to know about Sergeant Moore in
2 determining whether it was safe to leave him on
3 duty and in possession of his service weapon?

4 MR. COGLIANESE: Objection.

5 A. I would agree that that information was
6 something that the chain of command might want to
7 be aware of.

8 Q. Okay. Did you do anything to make the
9 chain of command aware of that?

10 A. Yes. I believe I took that to Kim
11 Jacobs.

12 Q. Okay. Soon after receiving it?

13 A. I do not know when that information was
14 brought to her.

15 Q. Okay. Probably before the actual
16 investigation concluded, though, since that was
17 like six or seven months later?

18 A. Right.

19 Q. Okay. Do you remember what she said
20 about it?

21 A. No.

22 Q. Okay. Do you also remember that some
23 of the allegations against Sergeant Moore had to
24 do with his handling of job openings in the

1 narcotics unit?

2 A. Yes.

3 Q. Okay. Do you remember what the first
4 information you had about that -- those job
5 openings or that job process was in this
6 investigation?

7 A. No.

8 Q. Okay. Do you remember that -- first of
9 all, there were a couple different openings that
10 Sergeant Moore was responsible for filling at the
11 time?

12 A. I believe so.

13 Q. Okay. Do you remember that one of them
14 was filled by a white officer named Jeremy
15 Ehrenborg?

16 A. I don't remember who filled what jobs.

17 Q. Okay. Do you remember that one of the
18 openings was filled in such a way that it resulted
19 in Chief Jacobs vacating the filling of the
20 position and reposting it?

21 A. I remember hearing that.

22 Q. Okay. Do you remember that as part of
23 the process of vacating and refilling that
24 position, you were notified so that it could

1 possibly be included in the investigation of
2 Sergeant Moore?

3 A. I don't believe it was included in the
4 investigation.

5 Q. Okay. I'm going to hand you what's
6 been marked as Plaintiff's Exhibit 20, which I'll
7 represent to you is a routing sheet about that
8 narcotics position. And I think the date's on it,
9 somewhere in the vicinity of January 20th, 2015.

10 A. Okay.

11 Q. Is there anything on that that would
12 refresh your recollection that this was forwarded
13 to you for your information and potential
14 inclusion in your investigation or in Sergeant
15 Decker's investigation?

16 A. Okay. This was forwarded to internal
17 affairs for information.

18 Q. Okay.

19 A. Which means it's include -- we're not
20 being told to investigate in any way.

21 Q. Okay. What's the purpose of forwarding
22 it for information?

23 MR. COGLIANESE: Objection. Go ahead.

24 A. So internal affairs is where every

1 investigation goes or every letter of information,
2 investigation or anything. So I'm not sure if
3 this was forwarded so that we could be the storage
4 location for this or if this was forwarded because
5 it involved these individuals that we were
6 currently investigating and to put it with it to
7 see if we needed it for anything, but there's no
8 indication on here that we were required -- we're
9 being told to include this in the investigation or
10 direct it in any way to interview anybody
11 regarding this incident, so...

12 Q. Okay. Who would it be forwarded to? I
13 guess it's got your name on it --

14 A. Yeah.

15 Q. -- now that I look at it.

16 A. It's forwarded generally to me, but
17 pretty much everything that comes to internal
18 affairs is forwarded to me, so I don't remember
19 ever seeing this. I remember being aware there
20 was an issue with the chain of command selecting
21 jobs. I remember vaguely being informed that
22 Chief Jacobs reposted the positions, because for
23 whatever reason, I don't recall exactly what
24 happened. I don't remember this being included in

1 our investigation regarding everything else that
2 involved these individuals, so...

3 Q. I mean, you recall that -- putting
4 aside the time frame, this did end up becoming
5 part of the investigation, this filling of this
6 job?

7 A. It might have. I haven't read the
8 investigation --

9 Q. Okay.

10 A. -- in years --

11 Q. Okay.

12 A. -- so...

13 Q. I'm going to hand you what's been
14 marked as Plaintiff's Exhibit 38. And I'll just
15 flip it to page 184 out of 208, which is marked at
16 the bottom 004148 in terms of the Bates stamp.

17 A. Okay.

18 Q. And I'll just ask you to take a look
19 and see if this reminds you that, in fact, the
20 filling of this narcotics position -- starts at
21 the very top of the page.

22 A. Oh, okay.

23 Q. And by no means do I want you to read
24 all of Exhibit 38 or even --

1 A. Thank you.

2 Q. -- any particular portion of it. I'm
3 sure you've read it before, and we'll go to
4 different parts of it. But I'm just asking you
5 whether this reminds you that Sergeant Decker did
6 end up investigating this job posting?

7 A. If it's here, he did.

8 Q. Okay. Do you remember that at the same
9 time or in the same time frame that Officer Shaw
10 reported the Dick Elias incident and the ATF
11 incident that he reported that he had been pushed
12 out of bidding for these narcotics jobs that are
13 at issue in this?

14 A. I don't recall the details of what he
15 reported at that time.

16 Q. Okay. Do you remember that there was
17 at some point a text message from Sergeant Moore
18 saying that Whitney Lancaster and Karl Shaw had
19 better not take the narcotics jobs because they
20 had called him a racist?

21 A. I don't recall.

22 Q. Okay. I'm going to hand you what's
23 been marked as Plaintiff's Exhibit 41. And I'm
24 turning it to page 014417 at the bottom. And I'll

1 ask you to just take a look at that page and let
2 me know when you're ready to --

3 A. The whole page?

4 Q. Just the whole page, and let me know
5 when you're ready to answer questions about it.
6 And as long as you're flipping it over, I guess
7 you can read the page after that, too, which I
8 think is -- first of all, the page that you just
9 read, or the pages that you just read were
10 Lieutenant Brust's analysis --

11 A. Yes.

12 Q. -- of charges against Sergeant Moore
13 that internal affairs upheld about the filling of
14 these narcotics positions, right?

15 A. Correct. So he is weighing in on
16 whether he agrees with our conclusion and
17 recommending discipline for those sustained
18 violations.

19 Q. Right. And then the following pages
20 are Commander Terri Moore's response to Lieutenant
21 Brust's recommendations, right?

22 A. Yes, correct.

23 Q. And Commander Moore is recommending
24 documented constructive counseling for not fairly

1 and equitably filling a narcotics bureau
2 assignment, and another documented constructive
3 counseling for not following an order from Gary
4 Cameron?

5 A. Correct.

6 Q. Okay. Do you have any recollection as
7 to why Sergeant Moore was not charged with any EEO
8 violations related to these narcotics positions?

9 A. No.

10 Q. Did you have any -- would you have had
11 any involvement or did you -- do you remember
12 having any involvement in discussions about
13 whether or not Sergeant Moore should be filling
14 narcotics vacancies considering that officers who
15 might apply for those vacancies were witnesses
16 against him in internal affairs investigation?

17 A. I don't recall ever having a
18 conversation about whether or not they should --
19 he should be filling positions. It's outside of
20 my position in internal affairs. Everyone was
21 aware of the ongoing investigation, so it's not my
22 job as the internal affairs commander to tell
23 deputy chief or other commanders how to run their
24 shop. I would not have gotten involved unless the

1 chief of police came to me and asked me for
2 information or my opinion. And I don't recall any
3 conversations like that.

4 Q. Okay. Are you familiar with the EEO
5 policy that the Columbus Police have that when an
6 officer is charged within -- or alleged to have
7 committed an EEO violation, that they need to be
8 removed from any supervision of the person who's
9 making the complaint against them?

10 A. Yes.

11 Q. Okay. What's your understanding of the
12 reason for that?

13 A. The reason for that is to separate the
14 individuals involved, not punish individuals that
15 are bringing forth allegations by removing them
16 from their position. The division believes that
17 moving the individual encourages -- the individual
18 that's being -- the allegation is against
19 encourages individuals to come forward with these.
20 And if we had a system where it was the other way
21 around and we were removing that person, it's a
22 form -- it's sometimes seen as a form of
23 punishment and it would discourage people from
24 coming forth.

1 Q. Okay. What's the purpose of separating
2 them at all?

3 A. To limit their contact during the
4 course of an investigation.

5 Q. Is one of the reasons to prevent
6 retaliation against the complainant?

7 A. Yes.

8 Q. Okay. The same principle would apply
9 when someone who's being accused of EEO violations
10 is in a position, a command staff position where
11 they're potentially going to be hiring or filling
12 positions, right?

13 A. If they're being accused of EEO
14 violations, correct.

15 Q. Well, Sergeant Moore was being accused
16 of EEO violations at the time, right?

17 A. I don't remember the exact allegations.
18 There was a lot of allegations made and, you know,
19 some of them are racial in nature, so I would
20 believe, yes, there's the potential for actual
21 allegations that are EEO related.

22 Q. I mean, we've talked about the
23 allegations?

24 A. Yes.

1 Q. Including he was using racial slurs --

2 A. Yes.

3 Q. -- against black officers and
4 threatening to kill them, so that would be an EEO
5 issue, right?

6 A. Yes.

7 Q. Okay. How -- well, I mean, the chain
8 of command, in order to determine whether Sergeant
9 Moore should be in a position of filling a
10 narcotics position, would need to know who the
11 witnesses and complaining -- the complaining
12 witnesses and complainants were in order to
13 determine whether that would be a concern, right?

14 A. I would think they would need to know
15 that.

16 Q. Okay. But internal affairs would have
17 all that information?

18 A. I don't believe internal affairs was
19 the only one that had that information.

20 Q. Why is that?

21 A. Well, I don't recall exactly who had
22 the information and who didn't, but this was an
23 ongoing investigation. Most -- generally all of
24 executive staff, the chief, and I am sure the

1 deputy chiefs would have relayed that to their
2 commanders, the individuals involved in this
3 investigation, so I don't think it was a secret
4 who was involved.

5 Q. Okay. Do you remember that as part of
6 this investigation, one of the things that
7 Sergeant Decker was looking into was that
8 Commander Cameron had instructed Sergeant Moore
9 not to have contact with Whitney Lancaster and
10 Officer Shaw about these narcotics positions
11 because they were witnesses in the investigation
12 against him?

13 A. I don't recall specifically.

14 Q. Okay.

15 A. But he clearly had --

16 Q. That was the allegation you were just
17 reading about, right?

18 A. Yeah. So he clearly had knowledge. It
19 was not a secret who was involved. And he was
20 clearly directing people to ensure that they --
21 they did not fill jobs or have contact with
22 people. He's clearly directing that.

23 Q. Okay. And that's because internal
24 affairs was informing the chain of command --

1 A. Yes.

2 Q. -- of the content of the investigation?

3 A. Yes.

4 Q. Okay. As the commander of internal
5 affairs at the time, did it concern you that
6 the -- well, let's focus on the order that
7 Sergeant Moore was found to have violated in this
8 situation. The order was don't contact Whitney
9 Lancaster about this job position because he's a
10 witness in the investigation against you, right?

11 A. Yes.

12 Q. And Sergeant Moore violated that order?

13 A. Yes, he did.

14 Q. Okay. And do you remember that, in
15 fact, he -- it wasn't that he just like had a
16 casual conversation with Whitney Lancaster about
17 the position, but he actually admitted that in the
18 conversation, it was clear to Whitney Lancaster
19 that he was angry. And it was clear that he
20 didn't want him to take the job. And the reason
21 he was angry is because Whitney Lancaster had
22 called him a racist?

23 MR. COGLIANESE: Objection.

24 A. I don't recall --

1 Q. Okay.

2 A. -- the details.

3 Q. I'm going to hand you what's been
4 marked as Plaintiff's Exhibit 35, which is one of
5 the summaries of investigative interviews that
6 Sergeant Decker conducted of Eric Moore. And I
7 don't want you to read that whole document.

8 A. Thank you.

9 Q. I would like you to turn to, I think
10 they're paginated at the top, page 20 of the
11 interview. Actually, if you hand it back to me, I
12 will mark the spot for you, that seems more
13 efficient and fits with Fred's preferences.

14 So I've marked a spot, the first full
15 paragraph on the top of page 20 where Officer
16 Decker is asking Sergeant Moore questions about
17 this particular conversation he had with Whitney
18 Lancaster.

19 A. Uh-huh.

20 Q. If you could just take a look at that
21 paragraph and let me know when you're ready to
22 answer questions about it.

23 A. I'm prepared to answers questions --

24 Q. Okay.

1 A. -- about that paragraph.

2 Q. So does this confirm to you that
3 Sergeant Moore admitted that in the conversation
4 he had with Whitney Lancaster, that he was angry
5 with Whitney Lancaster and he was angry because he
6 believed Whitney Lancaster had called him a
7 racist? I'll stop there.

8 MR. COGLIANESE: Objection. Go ahead.

9 Q. Does this confirm that?

10 A. This indicates that's what occurred.

11 Q. Okay. And that -- I guess my question
12 is: Internal affairs, under your command,
13 sustained an allegation against Sergeant Moore
14 that he had violated an order by talking to
15 Whitney Lancaster?

16 A. Yes.

17 Q. But there -- there was no finding of
18 retaliation against Sergeant Moore by internal
19 affairs. And I guess my question is: Why not?

20 MR. COGLIANESE: Objection. Go ahead.

21 A. I don't know exactly why we worded the
22 allegations the way we worded it, but the
23 direction, it appears, is -- from the chain of
24 command and this entire -- these allegations --

1 specific allegations are coming from the chain of
2 command. They're asking us to determine if he's
3 violated an order and they're asking us to
4 determine if he's improperly filled positions.
5 That is what we're investigating.

6 Q. So you -- your testimony is that it was
7 up to the chain of command how the allegations
8 would be worded, not up to internal affairs?

9 MR. COGLIANESE: Objection.

10 A. No. It -- we're given direction from a
11 chain of command. We determine how the
12 allegations are written. If there's additional
13 allegations added, this particular paragraph right
14 here is not overwhelming evidence of retaliation.
15 It is evidence that he was angry. It is evidence
16 that he potentially filled a job inappropriately.
17 This paragraph doesn't indicate to me that he is
18 necessarily retaliating that would cause me to
19 write an additional allegation of retaliation.

20 I will tell you that every single
21 internal affairs investigation that is forwarded
22 to the chain of command, the chain of command has
23 an opportunity at any point to add additional
24 allegations. Anyone in the chain of command can

1 make that recommendation, and they do. That
2 happens frequently, actually. So because internal
3 affairs doesn't craft a specific allegation
4 doesn't mean that it cannot be crafted or added at
5 any point.

6 Q. Certainly the evidence that you're
7 looking at could have been used to justify a
8 sustained allegation of retaliation against
9 Sergeant Moore?

10 MR. COGLIANESE: Objection.

11 A. That evidence could have been used to
12 further investigate, draft an allegation and
13 pursue that line of questioning potentially, but
14 every internal affairs investigation that we have,
15 we have to remain within a certain scope. It's an
16 issue of remaining contractual as well. So we
17 have to be careful about our scope. There is no
18 investigation that we can't come up with more
19 allegations and more allegations to investigate
20 and -- and expand an internal affairs
21 investigation, this one or any other.

22 Q. Okay. I guess -- well, let me -- I'll
23 add a couple facts in here that I think are
24 undisputed. One is at the time that Sergeant

1 Moore had this conversation with Whitney
2 Lancaster, Whitney Lancaster was -- still had an
3 active bid on this job, on the narcotics job,
4 okay?

5 A. Uh-huh.

6 Q. And he was senior to the officer that
7 was ultimately selected for the narcotics job.

8 A. Uh-huh.

9 Q. And within a day or two after having
10 this conversation with Sergeant Moore, he withdrew
11 his bid. Just taking that into account and noting
12 that what you just read is a summary of Sergeant
13 Moore's own testimony in response to Sergeant
14 Decker's questions --

15 A. Yes.

16 Q. -- is it fair to say that you could
17 have sustained an allegation of retaliation
18 against Sergeant Moore without doing any other
19 investigation about that particular conduct?

20 A. I don't think that's fair to say.

21 Q. Okay. Why not?

22 A. I think that if we were going to craft
23 a retaliation allegation, we would have to do
24 further investigation, ask questions pertinent to

1 his motives specifically for that, determine a lot
2 of additional things. I don't think that we were
3 clearly crafting our questions relative to the
4 allegation that we were investigating. And if we
5 wanted to investigate an additional allegation of
6 retaliation, I would expect that we would craft
7 questions for Sergeant Moore and Officer Lancaster
8 and anyone else involved that were more specific
9 to that allegation.

10 Q. Okay. What more questions would you
11 need to ask pertinent to his motives? He says in
12 the interview that his motive for doing this was
13 because Whitney Lancaster called him a racist.

14 A. His motive for doing what?

15 Q. For having an angry conversation with
16 him that violated an order from Commander Cameron.

17 A. So an angry conversation means he's
18 retaliating?

19 Q. I'm asking you.

20 A. I mean, if he -- if he's angry at him,
21 that's not necessarily going to meet the threshold
22 of retaliation in the work environment just
23 because he had an angry conversation. So were his
24 actions -- was Officer Lancaster's removal or self

1 selection out of the process a result of that? Is
2 it something that he did specifically because he
3 was, you know, retaliating for being called a
4 racist? I think that if we have an allegation,
5 we're going to ask questions specific to that
6 allegation. We're not going to just craft an
7 allegation and not ask any additional questions
8 relative to something serious.

9 Q. Okay. If an officer's being
10 interviewed by internal affairs about an
11 allegation about conduct that they've committed
12 and the officer is basically just answering a
13 question about something, and then in the course
14 of answering that question, they also just blurt
15 out basically like, oh, okay, and that was right
16 before I robbed that grocery store, you don't have
17 to start a new investigation and ask questions
18 about them -- about the grocery store in order to
19 add an allegation to the investigation, by the
20 way, Sergeant Moore also robbed a grocery store,
21 right? You can make a conclusion based on the
22 admission?

23 MR. COGLIANESE: Objection. Go ahead.

24 A. We'll probably ask a follow-up question

1 or two regarding the robbing of the grocery store.

2 I don't believe we're going to take that sole
3 statement and not ask any additional follow-up
4 questions related to that particular statement.

5 So, again, if we ask -- if we add additional
6 allegations, there's going to be several questions
7 specific to that allegation that we are going to
8 ask related to that.

9 Q. Okay. Sergeant Moore also sent a text
10 message to an officer named John Evans about this
11 conversation that he had with Whitney Lancaster,
12 in which he told John Evans that, again, that the
13 reason why he had the conversation with Whitney
14 Lancaster was because Whitney had called him a
15 racist, and he had an IA interview that Whitney
16 Lancaster did. Do you remember that?

17 A. No.

18 Q. Okay. Let me hand you what's been
19 marked as Plaintiff's Exhibit 22. Maybe I'm not.

20 (A discussion is held off the record.)

21 - - - - -

22 Thereupon, Plaintiff's Exhibit 22 is
23 marked for purposes of identification.

24 - - - - -

1 Q. I'm now handing you what's been
2 previously been -- well, what I've marked as
3 Plaintiff's Exhibit 22, which I will represent to
4 you were provided to us by the city and are text
5 messages that John Evans gave to Sergeant Decker
6 or forwarded to Sergeant Decker and which he
7 received from Sergeant Moore.

8 First I'll ask: Have you seen those
9 before?

10 A. I may have.

11 Q. Okay.

12 A. I don't recall.

13 Q. Assuming that they were included as
14 part of the supportive information for Sergeant
15 Decker's internal affairs investigation --

16 A. Uh-huh.

17 Q. -- would that have been something that
18 you reviewed?

19 A. It would have been.

20 Q. Okay. Doesn't this confirm that
21 Sergeant Moore was telling Officer Evans that he
22 had this conversation with Whitney Lancaster and
23 made it clear to him that he better not take the
24 narcotics job?

1 MR. COGLIANESE: Objection. Go ahead.

2 A. It appears that he does not want him to
3 take the narcotics job.

4 Q. But also not just that he didn't want
5 him to take it, but that he made it clear to
6 Whitney Lancaster that he better not take it?

7 A. I don't know what Whitney Lancaster
8 perceived from this, but it looks like he's
9 indicating that he does not want him to take his
10 job.

11 Q. Okay. But Sergeant Moore actually told
12 Officer Evans that it was his intention to convey
13 that to Officer Lancaster?

14 A. Okay.

15 Q. Isn't that an accurate reading of that
16 text message?

17 A. I guess. He didn't speak, but it was
18 clear he better not take my job. It appears that
19 he does not want Whitney Lancaster to take his
20 job.

21 Q. Okay. And that's what he was trying to
22 tell him, that's what he's saying to Officer
23 Evans?

24 A. Yes.

1 Q. That his motive was to make sure that
2 Whitney Lancaster knew that he better not take the
3 job?

4 A. Yes.

5 Q. Okay. And the reason was because he
6 had his audiotape, meaning -- his audiotape, his
7 internal affairs interview, and he told Decker
8 that Sergeant Moore was a racist. It's like the
9 first thing he says in the text message.

10 MR. COGLIANESE: Objection.

11 A. Yes. He appears angry that he was
12 accused of being a racist in the internal affairs
13 investigation.

14 Q. Okay. And as a result of that anger,
15 he violated an order from Commander Cameron by
16 talking to Whitney Lancaster about the job and
17 made it clear to Whitney Lancaster in that
18 conversation that he better not take the job?

19 A. Yes.

20 MR. COGLIANESE: Objection.

21 Q. Okay. And, in fact, Whitney Lancaster
22 ended up not taking the job as a result? You have
23 to say yes or no.

24 A. Yes.

1 Q. Okay. So I guess I'll go back and ask
2 again, what possible more information would
3 internal affairs need to sustain an allegation of
4 retaliation against Sergeant Moore based on that?

5 MR. COGLIANESE: Objection.

6 A. Again, I don't know what additional
7 information. I would have to sit down and
8 evaluate this. I don't recall if we evaluated
9 that particular allegation at the time or if we
10 considered it. We had a multitude of allegations
11 to consider.

12 Q. Okay.

13 A. Again, at any point, anyone in the
14 chain of command reads this investigation and
15 would like us to add an allegation all the way
16 through the chief of police, we're more than happy
17 to do so.

18 Q. Okay. Certainly this would have been
19 one of the things that you let the chain of
20 command know about so they could take action if
21 they needed to?

22 A. That this text message was sent?

23 Q. Yes.

24 A. I would believe we advised someone in

1 the chain of command.

2 Q. Okay. And not just at the very end of
3 the investigation, but also at the time that you
4 learned of it?

5 MR. COGLIANESE: Objection.

6 A. I would assume so.

7 Q. Okay. The --

8 A. The --

9 Q. Go ahead.

10 A. Relative to this, internal affairs was
11 not the only part of the Division of Police that
12 was aware this had occurred. This was also
13 involving Gary Cameron, this was also involving
14 Lieutenant Brust, this was also involving another
15 chain of command. So I don't know if they advised
16 anyone regarding the course of action, but Chief
17 Jacobs clearly was aware, because she -- she made
18 a decision to do something with the position when
19 they were posted.

20 Q. Your understanding is that Chief Jacobs
21 was aware -- well, first of all, this text
22 message -- the -- do you have an understanding of
23 why Officer Moore -- or Sergeant Moore was charged
24 with failure to follow an order rather than

1 insubordination --

2 A. No.

3 Q. -- on this?

4 Do you remember any discussions about
5 charging him with insubordination rather than
6 failure to follow an order?

7 A. I don't remember any discussions.

8 Q. Okay. Do you have an understanding
9 of the difference between --

10 A. Yes.

11 Q. -- failure to follow an order and
12 insubordination?

13 A. Uh-huh.

14 Q. What's the difference?

15 A. There's some very nuance differences.
16 It's the level of -- it's generally the level of
17 charge. Insubordination is considered a much
18 higher level of offense and results in higher
19 levels of discipline than just failing to follow
20 an order. We often separate the two of those into
21 administrative in nature and operational in
22 nature.

23 If you fail to follow an order in an
24 operational environment, it's much more egregious

1 and serious than if you fail to follow an order in
2 an administrative environment.

3 Q. Okay. That's not a hard and fast rule,
4 though?

5 A. No.

6 Q. You could be charged with
7 insubordination in an administrative environment
8 as well?

9 A. Correct. And there's a lot of nuances
10 to that particular charge. And when you look at
11 insubordination -- the contract requires that we
12 charge -- if we can charge you with something
13 other than insubordination, we must. So we have
14 to evaluate that in the context of what our
15 history is, comparables and whether or not we have
16 handled it similarly in the past.

17 The union will make an argument,
18 contractual argument for that one very quickly.
19 So we have a tendency to look at the circumstances
20 of the incident, pull the comparables from that
21 particular type of charge and determine where this
22 particular offense falls.

23 Q. Okay. Do you remember doing that in
24 this situation?

1 A. So discipline is not my particular --
2 internal affairs doesn't mete out discipline in
3 any way, shape, or form. We write out
4 allegations. We come to conclusions. The chain
5 of command is then to determine exactly what level
6 of discipline is attached to that. Pulling the
7 comparables and making that decision as to whether
8 that is an egregious violation or less, you know,
9 egregious violation is the task of the chain of
10 command, so I would not do that.

11 Q. Okay. Do you have a recollection of
12 why Sergeant Moore was not charged with an EEO
13 violation for passing over black officers in this
14 narcotics position to get to a less senior white
15 officer?

16 MR. COGLIANESE: Objection.

17 A. I do not know why that occurred.

18 Q. Okay. Do you remember that Sergeant
19 Decker found that the basis -- do you remember
20 that Sergeant Decker's basis for finding that
21 Sergeant Moore did not handle this assignment
22 fairly or equitably was that there was several
23 African-American officers who indicated that they
24 did not pass on the job; that they were passed

1 over to get to Jeremy Ehrenborg anyway?

2 A. I don't recall that specific
3 information. I don't know exactly why. I -- not
4 having read the investigation in so long, I don't
5 recall whether or not he was specifically passed
6 over those officers because of their race or he
7 passed over those officers because he liked --
8 would prefer to have Jeremy Ehrenborg if he was
9 friends with him. I don't know the details to
10 that.

11 Q. Okay. Do you remember that as part of
12 this investigation it turned out -- well, first of
13 all, do you remember that Sergeant Decker went and
14 got all the e-mails that Sergeant Moore sent about
15 this narcotics vacancy?

16 A. I would think that's normal course of
17 business.

18 Q. Okay. And it would also be normal to
19 read those e-mails, not just to collect them, but
20 also review them?

21 A. Yes.

22 Q. Okay. And he would have -- if he
23 included them in the investigative packet, you
24 would have also reviewed them?

1 A. I would have most likely reviewed them.

2 Q. Okay. Unfortunately, I think I'm going
3 to have to ask you to read several pages of the
4 internal affairs summary. You know, I don't see
5 any way around it right now, but it's only a few
6 pages, though. So I'm going to ask you to turn to
7 pages 197 to 200 of Exhibit 38.

8 MR. COGLIANESE: Let's go off the
9 record while she's reading it.

10 MR. VARDARO: Sure.

11 (A recess is taken.)

12 (Mr. Shaw left the room.)

13 Q. Just for the record, Officer Shaw had
14 to -- oh, you noted it already -- had to leave,
15 but we're going to proceed without him.

16 You've now had an opportunity to read
17 pages 197 through most of page 200 of Exhibit 38?

18 A. Yes.

19 Q. Does this remind you that Sergeant
20 Decker found that Officers Stephanie Gibson and
21 Mary Battle were not offered the narcotics
22 position after Sergeant Moore told them they would
23 have an opportunity to be offered it and then they
24 were passed over despite that?

1 A. I think the job was canceled, wasn't
2 it?

3 Q. If you look at the routing sheet from
4 before, the job was canceled after it was offered
5 to and accepted by Officer Ehrenborg?

6 A. Okay. Yes. Okay. So, yes, it looks
7 like he -- the allegation that he inappropriately
8 filled the job was sustained.

9 Q. Okay. But in particular, there were
10 two African-American officers, Gibson and Battle,
11 who were -- who were passed over without their
12 consent in filling that job?

13 A. Yeah, it appears like he indicated to
14 them in their interview or when speaking that he
15 indicated that he would contact them back and he
16 never did.

17 Q. Okay. Which was different from the way
18 that he dealt with the white officers who were
19 senior to Ehrenborg?

20 A. Yeah. I don't really see much
21 information about how he dealt with the white
22 officers, and I don't have any interviews from
23 Richard Moore and Brian Spann and Rice.

24 Q. Okay.

1 A. I'm not really sure how he dealt with
2 the white officers.

3 Q. Okay. Do you remember that there were
4 differences in the way that Sergeant Moore
5 responded to e-mails expressing interest in this
6 position between the black officers who responded
7 to it and the white officers who responded?

8 A. I don't recall any differences. I
9 don't recall looking at those.

10 Q. Okay. I'm going to hand you what's
11 been -- I'm going to hand you what's been marked
12 as Plaintiff's Exhibit 15. And I'll represent to
13 you that these are e-mails that Sergeant Decker
14 collected in his investigation about the narcotics
15 job and which he says were included in the
16 investigative packet, and I think that's his
17 pagination at the bottom in handwriting.

18 A. Okay.

19 Q. I don't need you to read the whole
20 exhibit.

21 A. Okay.

22 Q. But I'll just point you there -- I'm
23 sorry. There is a page marked 208 at the bottom
24 in Decker's handwriting?

1 A. Yes, uh-huh.

2 Q. And it's marked 4372 on the Bates
3 stamp?

4 A. Yes.

5 Q. It's an e-mail from Eric Moore to
6 Whitney Lancaster on December 20th, where Whitney
7 Lancaster expresses interest in the narcotics
8 assignment and Sergeant Moore responds: Okay, let
9 me know when you can meet at the office. You'll
10 be given a Spanish test. It's pass or fail.

11 A. Uh-huh.

12 Q. Do you remember that -- first of all,
13 this was an -- this was a position where there was
14 an exceptional qualification of Spanish?

15 A. Yes.

16 Q. But an exceptional qualification does
17 not mean if you don't speak Spanish, you can't be
18 considered for the job?

19 A. Correct.

20 Q. And then if you flip a few more pages
21 in, there is a page marked 214, which is also
22 Bates stamped 4378.

23 A. Uh-huh.

24 Q. And this is a similar type of e-mail

1 string between Eric Moore and Karl Shaw. And
2 around the middle of the page, Shaw is expressing
3 interest. And then Sergeant Moore says: A
4 lieutenant will be conducting your interview.
5 He's not available until Friday. Are you
6 available at noon on Friday? Let me know as soon
7 as possible so I can arrange to have a Spanish
8 translator available to administer the oral test.

9 A. Yes.

10 Q. Okay. And then if you flip two more
11 pages you get to 216, which is also 4380?

12 A. Yes, uh-huh.

13 Q. And this is Eric Moore to Stephanie
14 Gibson, similar, indicating that he's going to
15 administer a Spanish-speaking test?

16 A. Uh-huh.

17 Q. Sorry, you have to say yes or no.

18 A. Yes. Sorry.

19 Q. And if you go to page 221. This is an
20 e-mail chain between Eric Moore and Falacia
21 Dragin, who's also an African-American officer,
22 right?

23 A. Yes.

24 Q. And at the bottom of the page, he's

1 asking Officer Dragin if she's a Spanish speaker.
2 And she basically says she is, but she's not
3 fluent enough to -- you know, she's not extremely
4 fluent. And rather than informing her that that's
5 not an absolute requirement for the job, he just
6 says thanks. Do you see that?

7 A. Yes.

8 Q. Okay. If you can flip to the next
9 page. This is the one -- I think it's actually
10 the back of the page maybe. Oh, maybe not.

11 A. That's the back page.

12 Q. I'm sorry, you're right. So this next
13 page is marked at the bottom 294?

14 A. Yes.

15 Q. This is an e-mail from Eric Moore to
16 David Hammerberg, who is a white officer. And
17 Hammerberg expresses interest in the job. And all
18 Eric Moore says is, give me a call please or can
19 you give me a call please. Do you see that?

20 A. Yes.

21 Q. The following page 295, similarly
22 Russell Weiner is expressing interest in the job
23 and Sergeant Moore responds and says, can you give
24 me a call, Russ? Do you see that?

1 A. Yes.

2 Q. And Russell Weiner is also a white
3 officer?

4 A. Yes.

5 Q. Okay. And similarly page 296, the next
6 page after that, Bates stamp 4461, Norman Russell
7 is talking to him about the job. And Officer
8 Russell expresses interest. And he just says, can
9 you give me a call, Norman?

10 A. Yes.

11 Q. No -- and this is another white
12 officer?

13 A. No. Yes.

14 Q. No mention of a Spanish speaking test,
15 no mention of pass/fail, anything like that?

16 A. Correct.

17 Q. And I'll represent to you that we've
18 looked at a number of other e-mails between
19 Sergeant Moore and the white officer applicants
20 and Sergeant Moore and the black officer
21 applicants. And it appears consistent that the
22 black officers get sort of a warning that they
23 have to speak Spanish and the white officers just
24 get "call me." Do you remember that from the

1 investigation?

2 MR. COGLIANESE: Objection. Go ahead.

3 A. I don't recall the specifics of the
4 investigation as I'm looking through it, I don't
5 know which officers are purporting to be Spanish
6 speaking and which ones aren't. I think it is
7 normal that if they're going to claim the
8 exceptional qualification, which is one of the
9 reasons we can select -- we can either select
10 according to seniority or exceptional. If they're
11 going to claim the exceptional, they have to be
12 able to be tested and prove it.

13 So I don't know which officers are
14 claiming that, other than Falacia Dragin indicates
15 that she has some Spanish-speaking ability, but
16 not enough to pass the test. So I don't know
17 which officers are purporting to be Spanish
18 speaking.

19 Q. If it turned out that none of the
20 officers involved purported to be Spanish speaking
21 and the black officers got a different message in
22 response than the white officers did, would that
23 raise a concern in your mind about a potential EEO
24 consideration on this?

1 A. Yes.

2 MR. COGLIANESE: Objection.

3 Q. Adding in the fact that the officers
4 who told Sergeant Decker that they were not
5 offered the position or that Sergeant Moore didn't
6 come back to them with an offer once it got down
7 to them, as he promised them, were black, wouldn't
8 that also sort of enhance your concern about an
9 EEO violation here?

10 MR. COGLIANESE: Objection.

11 A. I don't recall what I was looking at at
12 the time specifically, and how we made the
13 decision to add or not add an EEO violation to
14 this particular. But, again, anyone can add an
15 additional allegation during the course of this.
16 This is not internal affairs making the call and a
17 single decision about whether or not these
18 allegations are the allegations -- the only
19 allegations included in the investigation.

20 Q. And just as a bottom line thing,
21 anything that you put in the internal affairs
22 investigation or anything that Sergeant Decker put
23 in the internal affairs investigation is not
24 binding on the chain of command; the chain of

1 command can overrule you?

2 A. Not at all.

3 Q. In either direction?

4 A. And they do.

5 Q. Yes. And I have no illusion about
6 that. I'm just asking you in terms of your
7 thought process and your decision-making in this.
8 Obviously, chain of command is more likely to
9 sustain a charge against an officer if something
10 actually appears in the internal affairs
11 investigation as opposed to if you don't put it in
12 there, right?

13 MR. COGLIANESE: Objection. Go ahead.

14 A. I would not say that that's standard
15 procedure.

16 Q. Okay.

17 A. But I think that the chain of command
18 is, you know -- can add or remove allegations as
19 they see fit. And so if we decide to put
20 something in there, they have to deal with it in
21 one way or another. But it is not unusual for the
22 chain of command to add an additional allegation.

23 Q. It wasn't your practice to just sort of
24 present the facts in an investigation and not make

1 a recommendation about whether a certain charge
2 should or shouldn't be brought, right?

3 A. A charge or an allegation?

4 Q. I'm sorry. An allegation.

5 A. So leaving internal affairs most --
6 most investigations have our allegations and we --
7 you know, those allegations are based on what was
8 raised during the course of the investigation. We
9 can add things if we see additional misconduct.

10 EEO was not something that was
11 forwarded us from the chain of command,
12 particularly in this particular job thing.
13 Related to these jobs, they didn't say, look at
14 this for an EEO violation. We could have added
15 that if we chose to add that. And if it left
16 internal affairs without that, the chain of
17 command could have added that as well.

18 Q. If the -- well, first of all, and I'll
19 get to this in a little bit, but at some point in
20 this process, you had a conversation with Sergeant
21 Decker where you wanted him to sort of streamline
22 his allegations or his analysis of this
23 investigation?

24 A. Yes.

1 Q. And one of the reasons you wanted to
2 streamline it was not just because you like
3 shorter documents, it was because you thought it
4 would be more likely for the chain of command to
5 process the information efficiently and completely
6 if they had a shorter investigation?

7 A. There were a couple reasons. One of
8 them is I know from experience that this
9 particular investigation was well over 200 pages
10 when he was working on it. And I know from
11 experience that the chain of command, when you get
12 into those more lengthy investigations, the
13 likelihood of them digesting every single word is
14 a lot less. And I want to make sure they read it
15 all the way through the chain of command and I
16 want to make sure that we're not putting a bunch
17 of information in there that isn't necessarily
18 relevant to the outcome.

19 Q. Okay.

20 A. Another reason that I asked him to
21 streamline the investigation as much as possible
22 is Chief Jacobs was concerned about the length of
23 time it was taking to do it, the length of the
24 investigation, which I kept her apprised of. And

1 she was very concerned about that for whatever
2 reason. She wanted to make sure that our
3 analysis, our review and summary of the evidence
4 and all of the interviews was very pointed, and
5 that we were moving forward with the investigation
6 very quickly.

7 Sergeant Decker has -- is a good
8 investigator, very detail oriented, but has a
9 habit of getting bogged down in details sometimes.
10 An investigation that one person can do in eight
11 pages will take him twenty. And there will be a
12 lot of detail in there. But a lot of the details
13 isn't necessarily relevant to the outcome. And it
14 reduces the likelihood that it is properly
15 digested by the chain of command, and it extends
16 the length of the investigation, which is good for
17 no one.

18 Q. Okay. And for both of those reasons,
19 it would make sense that if internal affairs
20 thought there was evidence that would support an
21 EEO investigation on these narcotics positions, it
22 would be better to make that explicit in the
23 summary rather than hoping that the chain of
24 command, that you're already concerned might not

1 digest all of this information, would read not
2 just the summary, but all of the background
3 investigational materials and digest it and look
4 at all of that stuff?

5 A. It would be better if we felt that that
6 was an appropriate allegation to include to
7 include that up front.

8 Q. Okay. Go ahead.

9 A. Could I clarify something that was
10 stated earlier, please?

11 Q. Sure. Absolutely.

12 A. We were discussing hypothetically what
13 if Sergeant Moore was talking during the course of
14 an interview and suddenly spurted out that he
15 robbed a bank.

16 Q. I said grocery store, but yes.

17 A. Grocery store or -- grocery store and
18 what would you do. And I said, well, I would ask
19 follow-up questions. I just wanted to clarify
20 that if he blurted out that he had committed a
21 criminal action, I would stop the interview
22 immediately, because it's criminal in nature. We
23 cannot continue and we would stop that and he
24 would -- you know, we would assess where we're

1 going with that particular allegation. It
2 probably wouldn't be included in that particular
3 investigation. That would be a separate one.

4 And then we would have to consider
5 Garrity and everything else. I think I just was
6 assuming that you were hypothetically discussing
7 what would happen if he blurted out misconduct,
8 but because that was criminal in nature, I wanted
9 to make sure that I clarified that we would not
10 continue that investigation --

11 Q. Okay.

12 A. -- interview.

13 Q. I guess if the ATF had already
14 investigated the grocery store thing and decided
15 it wasn't criminal conduct, you could keep going
16 at that point?

17 A. Uh-huh.

18 MR. COGLIANESE: Objection.

19 Q. The -- going back to the narcotics
20 positions. In addition to the pattern of the
21 e-mail responses and the fact that the officers
22 who were passed over without their permission were
23 black -- well, actually, I'm sorry, I'll go a
24 slightly different direction.

1 First of all, at the end of the long
2 portion, the pages 197 to 200 that we took a break
3 so that you could read?

4 A. Yes.

5 Q. This is a letter of information from
6 Sergeant Moore talking about how he filled the
7 position where he indicated that without
8 exception, the officers senior to Ehrenborg passed
9 in favor of Ehrenborg.

10 A. Yes, I see that.

11 Q. Based on Sergeant Decker's conclusions
12 about this assignment, that was not accurate?

13 A. I would -- I would say that that
14 particular statement from Sergeant Moore, I don't
15 remember reading that prior to this, but, yeah,
16 that's not accurate.

17 Q. Okay. And this -- do you remember that
18 this letter of information was something that was
19 forwarded up to Chief Jacobs?

20 A. I don't remember exactly how it
21 occurred.

22 Q. Assuming that you knew that at the
23 time, would that make it a more serious
24 inaccuracy?

1 A. That it was forwarded to the chief,
2 this particular letter, and I knew that this
3 was -- this statement wasn't accurate? Yes.

4 Q. Okay. Sergeant Decker wanted Sergeant
5 Moore to be charged with dishonesty for this
6 statement, among others, didn't he?

7 A. Yes, he did.

8 Q. Okay. Do you have a recollection of
9 why he was not?

10 A. I remember the discussions that we had.
11 I remember that I agreed with him on a lot of
12 these levels; that dishonesty was apparent. When
13 we make a decision as to whether or not to charge
14 an officer with untruthfulness, there is a lot
15 that goes into that decision, and that is
16 discussed with the chief of police. Because if we
17 charge somebody and we do not have the ability --
18 we don't have the evidence to support that for the
19 duration of the process to remove them from the
20 Division of Police, and we end up with that
21 individual back through arbitration or otherwise,
22 then we have an individual that has little or no
23 value as a police officer because they have a
24 sustained charge of untruthfulness.

1 So when we make a decision to charge a
2 police officer with untruthfulness, there is a lot
3 more that goes into that particular decision than
4 a lot of other decisions regarding charging
5 officers.

6 Q. Okay. Was it a decision that IA made
7 or was it a decision that the chain of command
8 overruled IA on?

9 A. That was a decision that was discussed
10 and decided on by the chief of police.

11 Q. Okay. As it turned out, I mean, you're
12 familiar with the arbitration proceedings in this
13 situation?

14 A. Vaguely familiar.

15 Q. Okay. As it turned out, didn't the
16 arbitrator basically -- one of the reasons why
17 Sergeant Moore's discipline was overturned was
18 because he was charged with something short of
19 dishonesty on things that he was evidently being
20 dishonest about, and the arbitrator basically
21 said, well, there is no rule about deceptiveness,
22 it's either you're dishonest or you're not?

23 MR. COGLIANESE: Objection.

24 Q. Do you remember that?

1 MR. COGLIANESE: Objection. Go ahead.

2 A. I do not recall. I do not recall if I
3 really read the arbitrator's decision. I knew
4 what decision came out of the arbitration. I did
5 not agree with it. An arbitrator's opinion as to
6 what they would have liked to have had varies
7 between arbitrators.

8 So, you know, whether or not we charged
9 him with an untruthfulness charge, to me it would
10 not necessarily have changed the outcome. If the
11 arbitrator particularly felt that way, then that
12 would have been written in his decision. But I
13 don't recall reading all of the decision for that
14 just knowing what the outcome was.

15 Q. Okay. This part of the investigation
16 didn't go to the arbitrator at all, right?

17 A. Which part?

18 Q. The narcotics position and how it was
19 filled?

20 A. I don't recall.

21 Q. Okay.

22 A. Once this leaves internal affairs, I'm
23 not emotionally attached to any of these
24 investigations. And the chain of command can do

1 what they want with it. And once it leaves
2 internal affairs, unless it comes back to us for
3 additional information or investigation, we are
4 done.

5 Q. Okay. The information you read before
6 about the chain of command process in this, which
7 was Exhibit 41 --

8 A. Yes.

9 Q. -- where Lieutenant Brust and Commander
10 Moore [sic] were analyzing and recommending
11 discipline on these sustained findings related to
12 the narcotics position.

13 A. Yes.

14 Q. They only recommended DCC on each of
15 those?

16 A. Yes.

17 Q. Actually Lieutenant Brust didn't even
18 think there should be a DCC on the first one. But
19 Commander Moore overruled him and recommended a
20 DCC. DCC would not go to arbitration, right?

21 A. A DCC could go to arbitration.

22 Q. Okay.

23 A. The union can arbitrate a decision, a
24 low-level decision based on a grievance process

1 just like they could arbitrate anything else.

2 Q. Okay. The -- you mentioned earlier
3 that you felt like you didn't -- that one of the
4 possibilities for why Sergeant Moore was not
5 charged with an EEO violation for the narcotics
6 position was because it may have been that he
7 skipped over people to get to Jeremy Ehrenborg
8 just because he preferred Ehrenborg as a buddy or
9 something like that --

10 A. Uh-huh.

11 Q. -- rather than because of race. In
12 fact, you had information from the text message we
13 looked at before and his interview with Sergeant
14 Decker that one of the officers that he skipped
15 over to get to Ehrenborg or that he pushed out of
16 position to get to Ehrenborg was Whitney
17 Lancaster, and that he specifically did that
18 because Whitney Lancaster had called him a racist,
19 right?

20 MR. COGLIANESE: Objection. Go ahead.

21 A. That was in the text message I believe.

22 Q. Okay. So it was clear that -- it's not
23 like he was telling Officer Evans, well, I -- I
24 pushed Whitney Lancaster out because otherwise he

1 would have taken the job and I wanted Ehrenborg
2 instead, he did it for retaliatory reasons?

3 MR. COGLIANESE: Objection. Go ahead.

4 A. I would not necessarily agree that that
5 was for retaliatory reasons. He could have been
6 trying to get to Jeremy Ehrenborg for -- because
7 that was his friend. And why he pushed Whitney
8 Lancaster out, why did he not select the next
9 white officer there? Why did he go to Jeremy
10 Ehrenborg? There's plenty of white officers all
11 the way down here that he could have -- if it was
12 based solely on race and not personality that he
13 could have selected. So I really don't know the
14 answer to that question.

15 Q. In your legal education and your EEO
16 training at the Columbus Division of Police, is it
17 your understanding that for something to be an EEO
18 violation or a violation of state or federal law
19 that the only reason somebody does something is
20 because of their race or in retaliation for
21 protected activity?

22 A. No, that's not.

23 MR. COGLIANESE: Objection.

24 Q. And, in fact, if it's a motivating

1 factor or a deciding factor or the cause of the
2 action, even if it's combined with some other
3 motive, it can still be illegal?

4 A. Yes.

5 MR. COGLIANESE: Objection.

6 Q. And that's true of division policy as
7 well?

8 A. It is.

9 MR. COGLIANESE: Objection.

10 Q. Okay. And in terms of the motive to
11 get to Jeremy Ehrenborg instead of some other
12 officer, basically all you had in this
13 investigation was Sergeant Moore just saying
14 that's why he wanted to do it, right?

15 A. Saying he wanted Jeremy?

16 Q. Yeah.

17 A. He's indicating clearly that he wants
18 Jeremy Ehrenborg to --

19 Q. Right.

20 A. -- in his -- to those he talked to
21 during the course of this. And I -- I don't know
22 if it's exclusively because of race or if, you
23 know, it's partially because of race. I have no
24 idea if that's the case. His behavior is

1 inappropriate clearly. The chain of command
2 identified his behavior as inappropriate. And --

3 Q. But it would have been far more serious
4 if it had an EEO specification on it?

5 MR. COGLIANESE: Objection.

6 A. If we had written an allegation with
7 EEO on it.

8 Q. If it was sustained and upheld by the
9 chain of command that it was not just
10 inappropriate, but discriminatory or retaliatory?

11 MR. COGLIANESE: Objection.

12 A. I think that would have -- that would
13 have -- that additional allegation would have
14 definitely raised more red flags if we would have
15 put it in there, but the allegation of failing to
16 follow an order is pretty serious as well. And
17 that was in there and --

18 Q. Okay.

19 A. -- received a DCC, so...

20 Q. Okay. But the failure to follow an
21 order allegation would also have been more serious
22 if it was failure to follow an order in order to
23 commit retaliation?

24 MR. COGLIANESE: Objection.

1 A. If it was for that reason.

2 Q. And we know that it was?

3 MR. COGLIANESE: Objection.

4 A. It could have been -- I mean, we could
5 have written the allegation any number of ways.
6 We could have added allegations, we could have
7 removed allegations, we could have done any number
8 of things.

9 Q. Yeah. And I'm just asking: If you had
10 done it that way, it would have been more serious?

11 MR. COGLIANESE: Objection.

12 Q. Failing to follow an order by itself is
13 not as serious as failing to follow an order in
14 order to interfere with an IA/EEO investigation
15 and retaliate against an officer.

16 A. I think it would have looked more
17 serious on its face, but not necessarily resulted
18 in a sustained outcome from the chain of command.
19 Sometimes the way we write allegations is --
20 causes the chain of command to react in a way
21 that, you know, that we are not likely to get a
22 sustained. So I think that if we would have
23 reworded that allegation, it would have definitely
24 raised red flags. But I don't -- I'm not

1 guaranteeing that it would have come out of the
2 chain of command sustained in that case.

3 Q. Even with an admission by the focus
4 officer that the reason he failed to follow the
5 order was because the officer had called him a
6 racist in an internal affairs investigation?

7 MR. COGLIANESE: Objection.

8 A. I do not control anything the chain of
9 command does once it leaves internal affairs.

10 Q. Okay.

11 A. Wish I did, but I do not.

12 Q. But you control what goes in internal
13 affairs reports?

14 A. I control the way -- the allegations to
15 a certain degree, the way the allegations are
16 written once they leave internal affairs.

17 Q. Okay. And are you telling me that the
18 reason why it wasn't alleged as failing to follow
19 an order in order to commit retaliation against an
20 officer was because you felt it would be less
21 likely to be sustained by the chain of command as
22 that charge?

23 MR. COGLIANESE: Objection.

24 A. No, that's not what I'm saying.

1 Q. Okay. So -- and I'm sorry. In
2 addition to controlling the way that the
3 allegations are worded, you also control what
4 evidence is highlighted most prominently in the
5 investigation? You and the sergeant who's writing
6 the report?

7 A. Not necessarily.

8 Q. Okay. Who controls that?

9 A. What evidence is highlighted? How --
10 can you be more specific?

11 Q. Well, I'll use an example. This is a
12 208-page investigative report. Roughly 160 pages
13 of it are about overtime and property theft
14 allegations, and only the very last couple dozen
15 pages have anything to do with equal employment
16 opportunity and the death threat against black
17 officers. If internal affairs had wanted to put
18 the discrimination allegations up front or make
19 them a more substantial portion of what was
20 covered in the investigation, that was certainly
21 within your power and Sergeant Decker's?

22 MR. COGLIANESE: Objection.

23 A. So you're assuming because it's
24 lengthier that it's more important, and that's not

1 necessarily accurate. An investigation involving
2 use of time -- time slips is very detailed,
3 requires a lot of minutia, and tends to be very
4 extensive in nature based on how it has to be
5 investigated, the information that has to be
6 included. And just because something has more
7 pages doesn't mean that it is more important as
8 far as how we, you know, present it. That was
9 never our goal.

10 Our goal was to deal with each
11 allegation independently in the best way that we
12 could. So it depends on what the allegation is
13 and the amount of evidence, how many actual pages
14 are the result of -- result from that particular
15 investigation of that allegation.

16 Q. In addition to what've already
17 discussed, the text message from Sergeant Moore to
18 John Evans that you looked at earlier indicated
19 that it wasn't just Whitney Lancaster who better
20 not take the narcotics job, it was also Officer
21 Karl Shaw, do you remember that?

22 A. Yes.

23 Q. Okay. Do you also remember that
24 Officer Shaw told Sergeant Decker that once the

1 job was reposted after it was canceled --

2 A. Uh-huh.

3 Q. -- he talked to Lieutenant Brust about
4 the job and told him that -- told him that Moore
5 was saying threatening things about him taking the
6 job, and that Lieutenant Brust basically said,
7 I'll try to protect you, but I'm not going to be
8 there all the time? And then Officer Shaw ended
9 up passing on the job as a result of that?

10 MR. COGLIANESE: Objection.

11 A. I don't recall specifically what
12 occurred there.

13 Q. Okay. Can you take a page -- can you
14 take a look at page 186 of Sergeant Decker's
15 summary?

16 A. Yes.

17 Q. And actually, if you hand me page 186,
18 I'll mark the spot that I want you to read. If
19 you just read the last paragraph of page 186.

20 You've read it?

21 A. Yes.

22 Q. Does this remind you that Officer Shaw
23 told Lieutenant Brust that he -- that Sergeant
24 Moore was going around saying that he better not

1 take the job, or something to that effect, and
2 that he told Lieutenant Brust that he couldn't
3 take the job because of it after Lieutenant Brust
4 basically indicated that he couldn't protect him?

5 MR. COGLIANESE: Objection.

6 A. Yes.

7 Q. Okay. So this is another incident of
8 retaliation by Sergeant Moore that resulted in a
9 black officer not getting one of these narcotics
10 positions?

11 MR. COGLIANESE: Objection.

12 A. I'm not convinced that's retaliation,
13 but --

14 Q. Okay. Why not?

15 A. I haven't read this entire thing, but I
16 don't have anything -- I'm going to get him, I
17 don't know if there's any indication what he meant
18 by that. I haven't read the full interview. I --
19 I can't make a statement as to whether or not
20 that's retaliation based on that single paragraph.

21 Q. What would you need to know in order to
22 determine it was retaliation?

23 A. I don't know. I haven't really
24 evaluated that, but I would want to know what he

1 meant by -- did he indicate that he -- what he
2 meant by, I'm going to get him. When we
3 interviewed Moore, did Moore actually indicate he
4 stated that? Did he provide any qualifiers of
5 what he meant when he said that?

6 If Lieutenant Brust didn't -- you know,
7 why maybe Lieutenant Brust didn't think that this
8 was serious in nature since he was involved in
9 this personally. He spoke to these individuals
10 and why he felt that this wasn't something that
11 needed to be dealt with for whatever reason.
12 Those are the kind of things that I would need to
13 know --

14 Q. Okay.

15 A. -- before I evaluated that, I think.

16 Q. Do you remember that Sergeant Moore
17 admitted to Sergeant Decker in his
18 informational -- in his IA interview that the
19 reason that he said that about Karl Shaw in his
20 text message was because Karl Shaw had accused him
21 of being a racist?

22 A. I remember the text message, but --

23 Q. In the portion of the text message I'm
24 talking about where he says he was clear to

1 Lancaster that he better not take the job and he
2 says the same goes for Karl?

3 MR. COGLIANESE: Objection.

4 A. The same goes for Karl, okay.

5 Q. And then if you take a look at
6 Exhibit 35, which I think is in front of you.

7 A. Right here.

8 Q. Yeah.

9 A. Okay.

10 Q. The very -- the second-to-last page or
11 the back of the last page, I guess, the front of
12 the last page. It's page 21 of the interview.

13 A. Uh-huh.

14 Q. And it's marked at the bottom 4728. If
15 you look at the second full paragraph or the
16 second paragraph, I guess?

17 A. Yes.

18 Q. It says, "I asked." Can you read those
19 couple of sentences?

20 A. I asked -- you wrote that it was clear
21 that he better not take my job. And then you
22 wrote, the same goes for Karl and Richard Moore.
23 Why did you say the same goes for Karl? Sergeant
24 Moore replied, well, because they -- he's accusing

1 me of being a racist and accusing me of all this
2 nonsense.

3 Q. Okay. You can stop there.

4 A. Okay.

5 Q. So, again, as with Whitney Lancaster,
6 who in the previous page of the interview he said
7 that he had told he better not take the job
8 because he called him a racist, he said basically
9 the same thing about Karl Shaw?

10 A. Uh-huh.

11 Q. You have to say yes or no.

12 A. Yes.

13 Q. Okay. So, again, you don't need any
14 more information about this officer's motive, he's
15 telling internal affairs what his motive was for
16 saying the statement, right?

17 MR. COGLIANESE: Objection.

18 A. Because he's being accused of
19 misconduct of being a racist.

20 Q. Right.

21 A. That is why he doesn't want them to
22 take the positions.

23 Q. Right. Right. And he -- so he's
24 taking action against these officers to discourage

1 them from taking the jobs because they have
2 participated in protected activity in accusing him
3 of race discrimination?

4 MR. COGLIANESE: Objection.

5 Q. Right?

6 MR. COGLIANESE: Objection.

7 Q. Is there something I've got wrong
8 there?

9 MR. COGLIANESE: Outside of misquoting
10 this --

11 MR. VARDARO: I'm sorry, Rich, I need
12 you to not make speaking -- you can say objection.
13 Your objection's on the record. I want her
14 answer.

15 A. Okay. So what is the question for me?

16 Q. The question is: Sergeant Moore --
17 wasn't Sergeant Moore taking action against these
18 officers to discourage them from taking the jobs
19 because they participated in protected activity in
20 accusing him of race discrimination?

21 MR. COGLIANESE: Objection.

22 A. So --

23 Q. Go ahead.

24 MR. COGLIANESE: Read the entire

1 document.

2 THE WITNESS: Okay.

3 MR. VARDARO: You want to stop so she
4 can read the whole document?

5 MR. GITTES: Fine.

6 MR. COGLIANESE: Page 21. If you're
7 not going to quote it accurately to her, then,
8 yes, she needs to read it.

9 MR. VARDARO: All right. Let's take a
10 break. You can read all of Exhibit 35. Rich
11 knows exactly what's in it.

12 THE WITNESS: Okay.

13 (A recess is taken.)

14 Q. So for the record, my understanding is
15 you feel like you can answer the question?

16 A. I will do my best to answer the
17 question.

18 Q. Okay.

19 A. Please repeat the question.

20 Q. My question was: Wasn't Sergeant Moore
21 taking action against these officers to discourage
22 them from taking the job because they participated
23 in protected activity by accusing him of race
24 discrimination?

1 MR. COGLIANESE: Objection. Go ahead.

2 A. So looking at Sergeant Moore's summary,
3 he's indicating that he doesn't understand why
4 they wanted to work for him. And he's indicating
5 that there wouldn't have been any problem if they
6 took the job. So his statements indicate that
7 that's not necessarily what was going on here;
8 that he believes that Karl could have come over
9 and taken that job. So it's not necessarily true
10 that he is taking action against them for those
11 reasons.

12 Q. Okay. He -- again, he -- he admitted
13 in the text message and admitted to Sergeant
14 Decker in the interview that he had an angry
15 conversation with Whitney Lancaster where he made
16 it clear to him that he better not take the job,
17 right?

18 A. Yes.

19 Q. Okay. And he's also admitting in this
20 interview with Sergeant Decker and in the text
21 message that the same goes for Karl. And the
22 reason was because Karl was calling him a racist,
23 right?

24 MR. COGLIANESE: Objection. Go ahead.

1 A. That's what appears to be occurring.

2 Q. Okay. And then after that, he says to
3 Sergeant Decker, and also, you know, honestly, why
4 would they even want -- if they thought I was a
5 racist, why would they even want the job? And
6 those kind of other things.

7 But none of that disputes what Sergeant
8 Moore is saying, which is, he conveyed to Whitney
9 Lancaster that he better not take the job in
10 response to Whitney Lancaster calling him a
11 racist, and none of it changes the fact that he
12 said the same thing about Karl Shaw, which caused
13 Karl not to take the job. None of that is changed
14 by the fact that he then goes and sort of muses
15 about why would they even want to work for me?

16 MR. COGLIANESE: Objection. Go ahead.

17 Q. Don't you agree?

18 MR. COGLIANESE: Objection.

19 A. Don't I agree that it doesn't
20 substantively change why he was doing it? He's
21 indicating that there's a variety of reasons why.
22 That might be one of them. This might also be one
23 of them. But, again, I'm not sure what the
24 question is for me. Is this related to --

1 Q. Okay.

2 A. -- is the question for me why I didn't
3 craft an allegation related to this particular
4 musing here? Or some of the other text messages,
5 why there was not an additional allegation? Is
6 that the question?

7 Q. If you want to answer that, that's
8 fine, too. I think I've asked that previously,
9 but I'm going -- I was going into a little bit
10 more about --

11 A. Okay.

12 Q. -- why would you need any more
13 information from an officer who's the focus of an
14 investigation to confirm their motive when they're
15 just saying it?

16 A. Okay.

17 MR. COGLIANESE: Objection. Go ahead.

18 A. Again, I can't tell you going back in
19 time why we crafted certain allegations and why we
20 didn't include a bunch of additional allegations.
21 I can't speak to what occurred years ago regarding
22 why this particular allegation was worded the way
23 it was and not worded the way you would like it to
24 be worded. I don't know how to answer any

1 additional questions about what I was thinking
2 years ago regarding this particular summary of an
3 interview in a 200-page investigation. Are you
4 asking my --

5 Q. I guess my question is: What is and
6 what was and wasn't important to you and internal
7 affairs and the Division of Police at the time in
8 the sense that if you have admissions from a
9 command officer of the Columbus Division of Police
10 that they have committed multiple violations of
11 the department policies and state and federal laws
12 prohibiting discrimination and retaliation, why it
13 wouldn't be important to internal affairs and the
14 Division of Police to make sure that they're held
15 accountable for those violations?

16 MR. COGLIANESE: Objection.

17 A. First of all, Sergeant Moore is not a
18 command officer, he is a sergeant. He's not part
19 of command staff at all. Second, those -- there
20 were numerous allegations, many sustained against
21 Eric Moore. We felt that everything that was
22 brought to the table had importance. We
23 investigated every single thing that we could to a
24 certain degree. There -- there's nothing in this

1 investigation that we said was -- that we didn't
2 evaluate and determine had some importance at some
3 point.

4 But because we have to maintain a
5 certain scope of an investigation, this could --
6 this investigation itself could still be going on
7 given the number of allegations that were brought
8 to the table every time someone was interviewed.

9 And I'm sure you've read the numerous
10 investigative summaries of the interviews that
11 occurred during the course of this investigation.
12 So I had made no decisions personally without
13 consulting other people regarding whether or not
14 we should take allegations seriously. How we
15 weighted allegations was based on conversations
16 that we had, evidence that was coming forth,
17 interviews that we were having at the time, and
18 that's how we determined how we -- further
19 investigation for every single allegation.

20 Q. What is your understanding of what the
21 word "retaliation" means under the division of
22 police's policies and state and federal law?

23 MR. COGLIANESE: Objection.

24 A. In general, retaliation is behavior

1 that is the result -- behavior that is the result
2 to the detriment of a party regarding a protected
3 action. It's behavior that -- and it's hard to
4 use it without the word "retaliation." It's
5 basically behavior that's meant to harm an
6 individual during the course of an employment that
7 has filed a claim or made an allegation or has
8 made a complaint against a supervisor or somebody
9 in the Division of Police.

10 So we look at those actions, any
11 actions that occur and we evaluate whether or not
12 it was meant to harm that person, or based on an
13 allegation that was brought forth during the
14 course of an investigation or a complaint or
15 something like that.

16 Q. There's no question in your mind that
17 Karl Shaw and Whitney Lancaster engaged in
18 protected activity for purposes of a retaliation
19 claim, right?

20 MR. COGLIANESE: Objection.

21 A. What protected activity? Like --

22 Q. That they --

23 A. -- specifically?

24 Q. -- accused Eric Moore of

1 discrimination?

2 A. There's no question they were accusing
3 Eric Moore of discrimination.

4 Q. Right. And that is protected
5 activity --

6 A. Correct.

7 Q. -- for purposes of CPD policy? For
8 purposes of state and federal laws --

9 MR. COGLIANESE: Objection.

10 Q. -- as you understand it?

11 A. Yeah.

12 Q. Okay. There's no question that Eric
13 Moore's actions in the narcotics job as he
14 described them toward Whitney Lancaster and
15 Officer Shaw were motivated, at least in part, by
16 his anger at them for calling him a racist?

17 MR. COGLIANESE: Objection.

18 Q. Because he said it right out.

19 MR. COGLIANESE: Objection.

20 A. There's -- you're saying that that's
21 settled -- settled argument.

22 Q. Yes. It's obvious that he admitted
23 that he was motivated, at least in part, by his
24 anger because he found out they called him a

1 racist in an IA investigation?

2 A. It appears that he has admitted that,
3 at least in part.

4 MR. COGLIANESE: Objection.

5 Q. Okay. And it appears also that both of
6 these officers ended up passing on narcotics
7 assignments because of the product of that anger
8 by Sergeant Moore?

9 A. That is what they indicated.

10 MR. COGLIANESE: Objection.

11 Q. Okay. There was no reason to doubt
12 that?

13 A. I don't have any reason to doubt that.

14 Q. Okay. Do you think it would be
15 understandable for an officer, particularly in a
16 covert assignment like narcotics, to pass on a
17 position where they would have to report to a
18 supervisor who they knew had told other officers
19 that they better not take the job?

20 MR. COGLIANESE: Objection.

21 A. I think that if supervisors are telling
22 people not to take a job, that that behavior is
23 not necessarily appropriate. And if I was an
24 officer and I was in a -- trying to obtain a

1 covert position, I think I would be concerned if
2 the supervisor I was working directly for did not
3 want me. But having taken jobs where they wanted
4 another person on the list, that has not dissuaded
5 me in the past.

6 Q. Have you ever taken a job where the
7 supervisor said, Jennifer Knight better not take
8 this job?

9 A. Not that I was aware of.

10 Q. Okay. If you had become aware of it,
11 wouldn't it have deterred you from taking that
12 job?

13 MR. COGLIANESE: Objection.

14 A. Probably not.

15 Q. Okay. Would you -- what would you have
16 done in response to that? Would you have just
17 taken the job or would you have reported it to
18 somebody?

19 MR. COGLIANESE: Objection.

20 A. Personally?

21 Q. Yes.

22 A. I would have taken the job and not
23 reported it.

24 Q. Okay. Why's that?

1 A. Just personal preference.

2 Q. Okay. Have you ever worked in a covert
3 assignment?

4 A. I have not.

5 Q. Okay. If you found out that another
6 officer passed on a job because they were told
7 that the supervisor said they better not take the
8 job, would you have thought that was an
9 unreasonable decision by that officer?

10 MR. COGLIANESE: Objection.

11 A. No.

12 Q. Okay. If the officer actually reported
13 it to the supervisor's commander or lieutenant,
14 and the lieutenant basically shrugged and said,
15 well, can't protect you all the time, I'll do what
16 I can, do you think that would be further
17 deterrence for that officer of taking the position
18 knowing that they're not really going to be
19 protected?

20 MR. COGLIANESE: Objection.

21 A. I can't answer for somebody else.

22 Q. Okay. What's your reaction to reading
23 what you read about what Lieutenant Brust said
24 when Officer Shaw reported the threat by Sergeant

1 Moore that he better not take the job?

2 A. I think Lieutenant Brust's actions were
3 inappropriate.

4 Q. Okay. Did you ask Sergeant Decker to
5 look into that, Lieutenant Brust's conduct in
6 failing to protect Officer Shaw in this situation?

7 A. I don't recall.

8 Q. Okay. Sergeant Decker says that you
9 told him to just let Lieutenant Brust and
10 Commander Cameron's chain of command handle their
11 conduct about the situation. Does that sound
12 right to you?

13 A. I don't recall.

14 Q. Okay. Do you remember having any
15 conversations with Chief Jacobs about whether
16 there should be charges against Lieutenant Brust
17 or Commander Cameron in terms of their treatment
18 of the narcotics assignment?

19 A. I don't remember what conversations we
20 had regarding this particular allegation.

21 Q. Okay. Do you remember that -- and I
22 think we may have discussed this a little bit
23 previously, but do you remember that Commander
24 Cameron and Lieutenant Brust, actually after they

1 prohibited Sergeant Moore from talking to Officer
2 Shaw and Officer Lancaster, did their own
3 interviews of Officer Shaw and Officer Lancaster
4 for the narcotics job?

5 A. I don't remember.

6 Q. Okay. Does it refresh your memory at
7 all to know that Commander Cameron sat in
8 interviews with Lancaster and Shaw and gave them
9 sort of a lecture about police corruption and
10 their work ethic? Does that ring a bell?

11 A. It does not.

12 Q. Okay. You're smiling. Why are you
13 smiling?

14 A. I -- I don't recall that.

15 Q. Is that kind of consistent with the way
16 that Commander Cameron operates towards
17 subordinate officers? Is that what's driving this
18 reaction or --

19 A. I'm not aware of whether he would
20 normally conduct interviews like that. I'm not
21 aware of whether he would lecture somebody
22 regarding those types of things, but --

23 Q. Okay. I want to jump back for a
24 second. We were talking about whether it would

1 deter different officers to know that the
2 supervisor in the position that they might take
3 had told people they better not take the
4 position --

5 A. Uh-huh.

6 Q. -- and whether that would deter them.

7 You understand that for purposes of a
8 retaliation, retaliation only is really actionable
9 under the law, I don't know about CPD policy, you
10 would know better than I would, under the law,
11 it's actionable if it would deter a reasonable
12 person?

13 A. Yes.

14 MR. COGLIANESE: Objection.

15 Q. Clearly at least that -- the supervisor
16 saying that the officer better not take the job
17 would deter a reasonable officer from taking the
18 job?

19 MR. COGLIANESE: Objection.

20 A. I don't know if that would -- a
21 reasonable person and a reasonable officer are two
22 different people.

23 Q. Okay.

24 A. So I wouldn't know if that would deter

1 a reasonable officer --

2 Q. Okay.

3 A. -- from taking the position.

4 Q. How do you -- how do you assess a
5 retaliation allegation as an internal affairs
6 commander without being able to make a
7 determination of what would deter a reasonable
8 officer?

9 A. So typically when we have a retaliation
10 claim, and based on some type of EEO allegation,
11 we work very closely with HR. It's not our area
12 of expertise. We handle the investigation portion
13 of that. We bring them in for an analysis of the
14 law. It is their area of expertise. And we want
15 to make sure that we're consistent and appropriate
16 in our response. We'll do the investigation, but
17 we work very closely with an HR person in most
18 cases to determine whether or not this has been
19 something -- we'll gather the evidence and then
20 we'll meet with them to talk about whether this is
21 a sustained violation or not if there's any
22 concerns about, you know, that type of an
23 allegation.

24 Q. Okay. That didn't happen in this

1 particular instance, though?

2 A. I don't recall if we met with HR.

3 Q. Okay.

4 A. It is something that we have been doing
5 for the last several years.

6 Q. Okay.

7 A. But I don't remember if we met with
8 them for this particular investigation.

9 Q. Okay. So if you could -- if you could
10 take a look at Exhibit 26, which I think is in
11 front of you somewhere.

12 A. 26?

13 Q. Yes. And I want you to read the first
14 roughly two and a half pages of that.

15 (A recess is taken.)

16 Q. So you've now had the opportunity to
17 read the first two and a half pages of Exhibit 26.
18 Does this refresh your recollection that part of
19 the investigation included Officer Shaw's
20 allegation that Commander Cameron conducted his
21 narcotics interview in a way that appeared to
22 target him?

23 A. It appears like he asked him several
24 questions and potentially lectured him. I'm not

1 really sure what you mean by "target."

2 Q. Well, he was selected for an interview
3 with Commander Cameron and Lieutenant Brust
4 because he had been identified as somebody who had
5 made a complaint against Eric Moore, right? It's
6 on the first page.

7 A. Yes.

8 Q. Because they wanted to separate him
9 from Eric Moore and not have Eric Moore involved
10 in considering them for these positions?

11 A. Sounds like a good decision.

12 Q. Right. And then conducted the
13 interview in a pretty confrontational way, right?

14 MR. COGLIANESE: Objection. Go ahead.

15 A. It sounds like -- this appears that
16 he's challenging him regarding his work product.

17 Q. Okay. And it was a position to be
18 filled by seniority with an exceptional
19 qualification of Spanish, right?

20 A. Yes.

21 Q. Okay. And you remember in the
22 investigation, none of the other officers who
23 applied for the positions were interviewed at all,
24 they were just asked whether they wanted the

1 position or not?

2 MR. COGLIANESE: Objection.

3 A. I believe they were asked and it was
4 indicated at some point they would be contacted if
5 an interview was necessary.

6 Q. Okay. Do -- I'll represent to you none
7 of them actually got interviewed. Some of them
8 were called -- some of them he said, call me, and
9 then they called him and he asked them to pass so
10 that he could get to Ehrenborg.

11 A. Okay.

12 MR. COGLIANESE: Objection.

13 Q. And then the black officers retreated
14 in a little different way that we've already
15 discussed, right?

16 MR. COGLIANESE: Objection.

17 A. So everyone passed.

18 Q. Everyone either passed or Sergeant
19 Moore falsely claimed they passed and then he
20 selected Ehrenborg?

21 A. White and black officers.

22 Q. The white officers passed, the black
23 officers, he claimed that they passed?

24 A. Okay.

1 Q. He got to Ehrenborg. No interviews.

2 The only two people who were interviewed were
3 Officer Shaw and Officer Lancaster by Commander
4 Cameron and that the interviews went like this?

5 A. And this is the interview?

6 Q. Correct.

7 A. Okay.

8 Q. You're familiar with the idea that when
9 an officer -- when a position is to be filled by
10 seniority or seniority plus an exceptional
11 qualification --

12 A. Uh-huh.

13 Q. -- sometimes the interview really is
14 just the supervisor talking to the person over the
15 phone and finding out whether they really want the
16 job?

17 A. It's handled in a variety of ways.

18 Q. But it can be as minimal as that?

19 A. Yes. It can be as minimal as that. It
20 can also be as minimal as an e-mail.

21 Q. Right. So, again, with -- I don't
22 want -- I don't want you to have to review the
23 entire investigation, but the basic point is, the
24 only people who actually had sit-down interviews

1 with any supervisor were Karl Shaw and Whitney
2 Lancaster who were selected for that because they
3 had made complaints of discrimination against Eric
4 Moore.

5 MR. COGLIANESE: Objection.

6 Q. And so given that, does any of that --
7 I mean, is any of this ringing a bell? Do you
8 remember any of that from the investigation?

9 A. I do remember some of these things.

10 Q. Okay. Do you remember --

11 A. As I read them, they sound a little
12 more familiar. What's the question?

13 Q. Do you remember that Whitney Lancaster
14 had a nearly identical interview with Commander
15 Cameron and Lieutenant Brust and also was
16 concerned because of the way that Commander
17 Cameron was acting toward him in the interview?

18 MR. COGLIANESE: Objection.

19 A. I remember that it was similar to this
20 one. Again, is there a question about Cameron?
21 What's the question?

22 Q. I asked you the question that I'm
23 asking. I just want to get -- I think you may
24 know from law school that there's a process

1 sometimes to this where we want to get the
2 foundational information to make sure that we're
3 on the same page before I ask you some of the
4 substantive questions. I haven't gotten an
5 indication whether we're on the same page, because
6 you won't answer the questions.

7 A. Okay. So I'm vaguely remembering this
8 as I read it. I remember this -- this interview,
9 having read this in the past. I remember that
10 there was another interview that was similar. I
11 remember they were conducted by Gary Cameron. I
12 remember those facts.

13 Q. Okay. And I'm -- I want to ask: Given
14 that these two officers were selected for the
15 process because they had made complaints of
16 discrimination and they both ended up reporting
17 that the interviews themselves seemed unusual and
18 inappropriate --

19 A. Uh-huh.

20 Q. -- did that raise a concern about
21 potential EEO violations or retaliation by
22 Commander Cameron?

23 MR. COGLIANESE: Objection. Go ahead.

24 A. There was no inclusion of an additional

1 allegation, but all the evidence is available for
2 anyone to read and look at and see if his conduct
3 was something that they would prefer that we
4 address with an additional allegation.

5 Q. Okay. And do you recall that Sergeant
6 Decker actually asked to pursue his concerns about
7 the way that Commander Cameron and Lieutenant
8 Brust handled these issues and you told him that
9 you needed to just let the chain of command deal
10 with it?

11 A. I do not recall that.

12 Q. Would you deny that you had that
13 conversation with Sergeant Decker?

14 A. I'm not going to confirm or deny that.
15 I don't recall if that ever happened.

16 Q. Okay. But because you don't recall if
17 that ever happened, you're not saying it didn't
18 happen, you just don't remember one way or the
19 other?

20 A. Correct.

21 Q. Okay. In Karl Shaw's interview with
22 Sergeant Decker, he indicated that there was a --
23 yet another process of filling a narcotics
24 position after this where he determined that he

1 really needed to take a narcotics position, and he
2 told Lieutenant Brust he was willing to take it,
3 but then the position was filled by a more senior
4 white officer named Dave Allen. Do you remember
5 that?

6 A. No.

7 Q. Do you know who Dave Allen is?

8 A. No.

9 Q. Okay. Would you deny that Sergeant
10 Decker asked you if he could investigate why Dave
11 Allen took that position and you told him that he
12 could not investigate it because it was a rabbit
13 hole that he shouldn't go down?

14 MR. COGLIANESE: Objection.

15 A. I don't recall that conversation at
16 all.

17 Q. Okay. But if Sergeant Decker said that
18 he recalls it, you wouldn't dispute him?

19 MR. COGLIANESE: Objection.

20 Q. I'll withdraw it.

21 If I can refresh your recollection just
22 a little bit further. Dave Allen is an officer
23 who's assigned to DEA task force. Are you
24 familiar with the DEA task force?

1 A. Yes.

2 Q. He took -- the position that was open
3 was in an investigative unit of narcotics called
4 investigative C.

5 A. Yes.

6 Q. Dave Allen's assignment at the time
7 that he took that was investigative E, which is a
8 virtually identical assignment and had no impact
9 on his actual hours or pay or anything like that,
10 because he was on the DEA task force.

11 A. Uh-huh.

12 Q. So there's this sort of inexplicable
13 movement from him, from investigative E to
14 investigative C. And Sergeant Decker thought that
15 that would be worth looking into in terms of
16 figuring out why he would do that at that time.
17 And you told him that it was not worth looking
18 into?

19 A. Okay.

20 Q. Does that --

21 A. I will tell you that I don't recall
22 that conversation at all. I'm not confirming or
23 denying that we ever had that conversation. It
24 could have occurred years ago in the midst of

1 dozens and dozens of conversations about dozens
2 and dozens of allegations. So I don't recall
3 that. But it is normal for me to evaluate every
4 single time an additional potential allegation, or
5 not even an allegation, but something suspicious
6 is arising during the course of an interview.

7 We would look at the scope, we would
8 look and see if that was relevant to what we were
9 investigating, if it was -- there was enough
10 evidence to indicate that was serious misconduct
11 or misconduct that would have to be investigated.
12 But every suspicion by every investigator in
13 internal affairs related to a comment in an
14 interview is not necessarily going to be
15 investigated, because we are required to evaluate
16 things based on scope.

17 Q. Okay. And then one other aspect of
18 this narcotics position, do you remember in the
19 text message you looked at, and if you don't, it's
20 right in front of you in Exhibit 22, that Sergeant
21 Moore said to Officer Evans that what Richard
22 Moore, a white officer, had done was worse than
23 what the brothers had done?

24 A. Okay. I see the -- the sentence there.

1 Q. Yeah. Do you remember that Sergeant
2 Decker had concluded that this was the racial
3 language that he was referring to black officers
4 as brothers?

5 A. I don't recall him ever indicating that
6 he has determined that that was racial language.
7 It doesn't appear derogatory. The word "brothers"
8 doesn't necessarily appear derogatory there. And
9 Sergeant Decker's, you know, personal feelings
10 about, you know, what the word means, that's kind
11 of ambiguous in my opinion as --

12 Q. Well, I'm sorry, I should clarify.
13 Officer Evans told Sergeant Decker that he
14 believed when Sergeant Moore said, "the brothers,"
15 he was referring to black officers.

16 A. Okay.

17 Q. And Sergeant Moore claimed that when he
18 was referring to the brothers, he was referring to
19 something known as the brothers in Christ, which
20 is some --

21 A. That doesn't sound familiar, but --

22 Q. I don't think it was familiar to
23 anybody. But Sergeant Decker told us that he
24 believed that Sergeant Moore was lying about that

1 and that he should be charged with untruthfulness
2 for falsely claiming that he was not using a
3 racial term there.

4 A. Okay. That -- we could have had that
5 conversation between myself and Sergeant Decker
6 and the lieutenant. We could have had that
7 conversation based on the information that you're
8 just giving me right now with nothing else. I
9 don't think that that's something that we would
10 pursue a lie -- specifically a lying charge
11 against an individual because they're claiming
12 that they meant something else when they used the
13 word "brothers." It would be difficult to prove.
14 It wouldn't survive an arbitration. It wouldn't
15 probably survive a discussion with the chief at
16 that point.

17 Q. You mean without -- I'm sorry, without
18 further investigation you mean?

19 A. So I don't think the word "brothers" in
20 itself looks like it would be a situation where we
21 would pursue a lying charge, because he said,
22 well, no, this is what I meant by the word
23 brothers, and someone else says, no, I think he
24 meant this. It's a difficult -- it's going to be

1 difficult to prove that. So I don't think we
2 would have pursued a lying charge based just on
3 that. I'm sure we would have evaluated in the
4 context of everything else.

5 This particular investigation, when we
6 looked at pursuing lying charges against Sergeant
7 Moore was -- would be more of a totality of the
8 circumstances, because of a multitude of
9 interviews and a belief that what we were getting
10 from him, in a lot of cases, was less than -- less
11 than truthful or not as forthcoming as he should
12 have been. It would not have been based on a
13 single use of the word "brothers" for a lying
14 charge.

15 Q. Do you recall that, in fact, the charge
16 against Sergeant Moore for being deceptive in the
17 investigation as it was ultimately concluded in
18 the internal affairs investigation was that -- was
19 essentially limited to a couple of specific
20 incidences and did not result in the totality of
21 the circumstances?

22 A. I do not recall that. I will tell you
23 that the conversation about the multitude of
24 interviews that we had, the totality of the

1 circumstances, that was a conversation that I had
2 with Chief Jacobs on several different occasions
3 as we got further along in the investigation. You
4 know, Sergeant Decker did bring to me that he
5 didn't feel that Sergeant Moore was especially
6 forthcoming and was deceptive in his responses
7 during the course of the internal affairs
8 investigation.

9 We have to evaluate potentially how
10 successful we're going to be in any of those. So
11 I had that conversation with Chief Jacobs a couple
12 different times during the course of the
13 investigation about whether or not an
14 untruthfulness charge was appropriate.

15 Q. Okay. We've covered a fair amount of
16 ground on this narcotics position, so I just want
17 to take a moment to see whether you -- you agree
18 with me about the basic conclusions here.

19 First of all, is it accurate to say,
20 based on your recollection of this at the time,
21 that the narcotics openings were being filled by
22 Sergeant Moore, he was under investigation for
23 making racial slurs and violent threats toward
24 black officers which had been corroborated by

1 other officers at the time?

2 A. Yes, he was under investigation for
3 those allegations.

4 Q. And the allegations had been
5 corroborated by that point by Officer Watkins and
6 some of the other ones that we discussed?

7 A. Some of them, yes.

8 Q. Okay. He ended up attempting, at
9 least, to fill the first narcotics position with a
10 less senior white officer and passed over more
11 senior black officers in order to do it, right?

12 A. Yes. He also passed over more senior
13 white officers.

14 Q. He was untruthful in his written report
15 to Chief Jacobs when he claimed that all of the
16 black officers passed on the job in order to get
17 to Ehrenborg?

18 A. Yes, it appears he was not entirely
19 truthful in that statement.

20 Q. He violated an order not to contact one
21 of the more senior black officers who had applied
22 for the job and admitted that he had violated that
23 order because he was angry that the officer called
24 him a racist and he wanted to make clear to him

1 that he better not take the job?

2 MR. COGLIANESE: Objection.

3 Q. That's accurate?

4 A. It appears so.

5 Q. Officer Shaw, a more senior black
6 officer who had been passed over in the first
7 posting, then passed on the rebid posting because
8 he found out that he was threatened by Sergeant
9 Moore in a text message; is that accurate?

10 MR. COGLIANESE: Objection.

11 A. Could you repeat that one more time?

12 Q. Officer Shaw passed on the rebid
13 opening for the narcotics job because he was
14 threatened by Sergeant Moore in a text message?

15 A. I believe that's Officer Shaw's
16 statement.

17 Q. Okay. Well, confirmed by the text
18 message itself?

19 A. I can't speak to exactly why he passed,
20 but that's what he stated was the reason he
21 passed.

22 Q. Okay. Well, that's what he told
23 Lieutenant Brust?

24 A. In his interview.

1 Q. Okay. And Lieutenant Brust confirmed
2 that he told Officer Shaw that he couldn't protect
3 him all the time?

4 A. That's in the investigation, yes.

5 Q. Okay. That same text message, as we
6 discussed, also contained potential racial
7 language calling Shaw and Lancaster the brothers,
8 although Sergeant Moore denied it?

9 A. Denied that it was racial.

10 MR. COGLIANESE: Objection.

11 Q. Yes?

12 A. I -- the word "brothers" to me doesn't
13 necessarily connote racial language.

14 Q. But it can, right? I mean, that
15 sometimes an office --

16 A. It could, yes. It could. So the
17 answer to that question was it could connote or
18 it could not connote racial language.

19 Q. Sergeant Moore admitted to Sergeant
20 Decker that he sent that text message about
21 Officer Shaw and Officer Lancaster because he was
22 angry because they called him a racist earlier in
23 the internal affairs investigation?

24 A. He did indicate that in his interview.

1 Q. Okay. Officer Shaw reported the threat
2 to Lieutenant Brust who was in charge of filling
3 the position at that time and Lieutenant Brust
4 took no action and did not report it?

5 MR. COGLIANESE: Objection.

6 A. I don't know if Lieutenant Brust
7 reported it to anybody else.

8 Q. Okay. He certainly took no action to
9 do anything about it?

10 A. I have no indication that he took
11 additional action from what I've read.

12 Q. Okay. The result of all of that was
13 that a less senior white officer than Officer Shaw
14 got the narcotics job?

15 MR. COGLIANESE: Objection.

16 A. I believe that job was canceled and --

17 Q. I'm talking about the rebid job. I'm
18 sorry. The job ended up going to an officer named
19 Ernie Rice?

20 A. Oh, okay, I'm not aware.

21 Q. Do you know Ernie Rice?

22 A. No.

23 Q. Do you know Ernie Rice is a white
24 officer?

1 A. No.

2 Q. Okay. And I think we just discussed
3 the other job went to a more senior white officer
4 who switched narcotics jobs, despite being on a
5 task force where the switch would have no effect
6 on his actual hours or duties?

7 MR. COGLIANESE: Objection.

8 A. Okay.

9 Q. Do you have any dispute with that?

10 A. That it went to those officers?

11 Q. Yeah.

12 A. And their race, no, I don't dispute
13 that it -- those are the officers that got the
14 jobs, or I don't -- and I don't dispute their
15 race.

16 Q. Okay. Out of all of that, Sergeant
17 Moore was never charged with any EEO violations as
18 part of the AI [sic] investigation or the chain of
19 command review of the IA investigation?

20 A. Okay.

21 MR. COGLIANESE: Objection.

22 Q. Are you -- do you have any -- I mean,
23 that's -- you know that, right?

24 A. Okay. I will tell you I have not --

1 literally not looked at every allegation attached
2 to this. And you're telling me that it wasn't, I
3 would concede that's probably accurate. I have
4 not read every allegation attached to this. I did
5 not follow this investigation after I left
6 internal affairs. I do not know if there was any
7 additional allegations added. I don't recall any,
8 so I'm not going to dispute that.

9 Q. Okay. Did you ever have discussions
10 about -- well, did you know that sergeant -- that
11 Officer Shaw and Officer Eric Cornett had filed
12 Ohio Civil Rights charges about their treatment
13 during this period?

14 MR. COGLIANESE: Objection.

15 A. I don't -- I don't recall, but it
16 wouldn't -- it's very possible.

17 Q. Okay. Were you in any discussions
18 where the command staff was expressing concerns
19 that if the department admitted that Sergeant
20 Moore had engaged in EEO violations or retaliation
21 of some kind, that that might affect the
22 department in terms of the Civil Rights Commission
23 proceedings?

24 A. I don't recall ever being in that.

1 Q. Okay. Would you deny that that
2 occurred?

3 A. No. I think it might stand out in my
4 mind, but I don't really recall that conversation.
5 And, yeah, I don't recall any discussion like that
6 happening at an executive level.

7 Q. Okay.

8 A. And me being a part of it as a
9 commander.

10 Q. Have you ever been involved in an EEO
11 investigation as commander of internal affairs
12 where EEO charges were upheld against an officer?

13 A. I don't -- I don't know. But that
14 would be a matter of record, I'm sure, during my
15 tenure.

16 Q. You don't remember any?

17 A. I don't recall any.

18 Q. Okay. Do you remember that at the
19 conclusion of this investigation, Sergeant Decker
20 -- or just prior to the conclusion, I guess,
21 Sergeant Decker gave you an initial report that
22 was even longer than the report that was
23 ultimately issued?

24 A. Yes.

1 Q. Something more like 300 pages than 200
2 pages?

3 A. Yes.

4 Q. How did he give you that?

5 A. It is a rough draft copy and it is a
6 hard copy, not an electronic copy. And that was
7 my opportunity to sit down and go through the
8 investigation. And I will say that Sergeant
9 Decker, again, is a very detail-oriented person.
10 He puts a lot of information into his
11 investigations, whether it's this one or something
12 that is very minor in nature.

13 A lot of times there's more detail than
14 is necessary for an internal affairs
15 investigation. We do not have to have a play by
16 play of every word stated in every -- during the
17 course of an investigation. So it wouldn't be
18 unusual for Sergeant Decker to give me an
19 investigation and me to cut the length of it
20 strategically to make sure that what we're
21 focusing on is -- is relevant to the allegations
22 and there's not a bunch of tangents in there that
23 are not relevant to the investigation.

24 So, yes, I remember this one

1 specifically. I remember it was very extensive.
2 And I remember it was reduced, the length was
3 reduced strategically to make sure that we were
4 focusing on the facts and evidence and important
5 things in this investigation. And I was removing
6 redundancies and things that were not relevant to
7 what they needed to know, the chain of command
8 needed to know to make a decision on each
9 particular allegation.

10 Q. Okay. What happened to the hard copy
11 of the longer draft?

12 A. Oh, gosh. I don't know.

13 Q. Do you know whether you kept it or you
14 gave it back to Sergeant Decker or --

15 A. I would not have kept it.

16 Q. Okay.

17 A. I would have taken that hard copy and
18 gone through it and made changes, corrections,
19 line through, written on it, asked questions,
20 things like that.

21 Q. But you have no idea where that would
22 be today?

23 A. No.

24 Q. Okay. Did you have a practice of

1 shredding things like that, or it just was --

2 A. It was a draft. Internal affairs, you
3 know, investigators, every time, you know, we send
4 a draft through, those drafts have typos and so on
5 and so forth in them. We don't necessarily keep
6 those drafts. I don't know if Sergeant Decker
7 kept something that was merely a draft at that
8 point. I just -- I don't recall what our
9 particular -- once it leaves internal affairs, we
10 have to retain that particular document, so if it
11 goes to -- it leaves internal affairs, it's no
12 longer a draft and it goes to the chain of
13 command. And the chain of command sends it back
14 for additional information, we keep that one,
15 because it has left internal affairs as -- and
16 it's something more than a draft at that point.
17 So this particular one, I don't know if Sergeant
18 Decker put it in a file and kept it in his notes
19 or not.

20 Q. I think you may have already answered
21 this next question, but did you show the draft to
22 anybody in the chain of command before it got
23 pared down to the current version?

24 A. I wouldn't do that --

1 Q. Okay.

2 A. -- most likely.

3 Q. Did you talk to anybody in the chain of
4 command about, I got this 300-page thing and it's
5 got all this --

6 A. That's very possible.

7 Q. Okay.

8 A. I would have had a verbal conversation
9 with the chief of police or, you know, executive
10 staff at some point to talk about the length of
11 that, possibly. And that I was reducing and, you
12 know, getting rid of some of the redundancies and
13 the things that weren't relevant.

14 Q. Do you remember that the initial draft
15 of the report contained many more instances of
16 untruthfulness that Sergeant Decker wanted to be
17 charged than the final draft?

18 MR. COGLIANESE: Objection. Go ahead.

19 A. I don't recall what was in that draft.

20 Q. Okay. So you wouldn't dispute Sergeant
21 Decker's recollection that it did?

22 A. I would -- I would qualify that with
23 Sergeant Decker's feelings about whether something
24 should be included or not included would be

1 considered, but aren't necessarily -- aren't
2 necessarily what we should do with an
3 investigation. His personal feelings about
4 whether he wants to include every single word or
5 every single feeling about whether somebody was
6 telling him the truth or not are considered, but
7 it isn't necessarily the best course of action to
8 include everything an investigator feels should be
9 included.

10 Q. So it's consistent with your
11 recollection that Sergeant Decker wanted to charge
12 Sergeant Moore with more things than he ended up
13 getting charged with?

14 MR. COGLIANESE: Objection.

15 Q. In the -- or at least sustained
16 allegations in the report?

17 A. It's very likely that Sergeant Decker
18 felt that way.

19 Q. Okay. The -- did you get an
20 explanation from the chain of command for why they
21 ended up -- well, first of all, do you remember
22 that whether the allegation came up from internal
23 affairs to the chain of command, the allegation
24 that Sergeant Moore was deceptive during his IA

1 interviews was -- included the rule of conduct
2 violation for dishonesty and that it was changed
3 by the chain of command to the rule of conduct
4 violation for unbecoming conduct?

5 A. I recall that.

6 Q. Okay. Do you remember getting an
7 explanation from the chain of command for why they
8 did that?

9 A. Chains of command never give me an
10 explanation as to why they don't agree with the
11 things that I send to them.

12 Q. Okay. And that includes this case?

13 A. And that includes this case. I don't
14 recall them ever giving me their reasoning behind
15 why they made a decision to go in a different
16 direction, and I have no control over that.

17 Q. Okay. Did you have any role -- I think
18 you may have already answered this. Did you have
19 any role in the arbitration? Were you a witness
20 or anything along those lines?

21 A. I don't believe I did.

22 Q. Okay. You -- prior to your current
23 assignment, you were reassigned from internal
24 affairs to patrol?

1 A. Yes.

2 Q. Do you -- do you know why you were
3 reassigned?

4 A. The chief never personally shared why
5 she was reassigning me to patrol. She doesn't
6 have to. I have personal feelings as to why, and
7 those are based on the fact that we were not
8 coming to the same conclusion on a variety of
9 investigations. She was not happy with my
10 findings and my outcomes for a variety of
11 investigations. When my immediate supervisor is
12 not agreeing with me on a regular basis, it's
13 probably time as the internal affairs commander
14 that I find another position. Because that has to
15 be a relationship where we're on the same page
16 most of the time, and we were not on several
17 investigations prior to my removal from internal
18 affairs and reassignment. So I think that was
19 probably a good decision, whatever was the
20 reasoning behind it.

21 Q. What investigations were you not on the
22 same page about?

23 A. Oh, there were several. But the one
24 that sticks out that was close in proximity to

1 when I left internal affairs was the case against
2 Officer Schwegler. And he was an officer that was
3 accused of some critical misconduct. And I -- the
4 chief and I were on a different page as to how it
5 should be investigated and what the outcome should
6 be. And I firmly believed that that officer
7 needed to be terminated, and I don't think that
8 that was the direction that the division was
9 going.

10 Q. What did Officer Schwegler do?

11 A. Officer Schwegler did -- the first
12 thing that Officer Schwegler did was he sexually
13 harassed female officers at the academy. I
14 believe he should have been terminated for that.
15 He was not.

16 Shortly thereafter, we received
17 information indicating that Officer Schwegler was
18 on duty going -- he was a married officer with
19 several children, but he was spending his entire
20 shift at his girlfriend's house on duty and not --
21 like he would literally leave the substation, go
22 to his girlfriend's house and stay there all
23 night. And he would respond to calls sometimes --
24 the allegation was he would respond to calls from

1 his girlfriend's apartment. He would clear calls
2 without responding.

3 We received this allegation shortly
4 after him being involved in the prior
5 investigation and that's critical misconduct. And
6 I believed that the best way to ensure that we did
7 a good investigation was to do surveillance.
8 Surveillance is not something that Chief Jacobs
9 was comfortable with. I was.

10 So during the course of that
11 investigation, we surveilled his girlfriend's
12 house and caught him doing that. We conducted an
13 interview consistent with the contract. The union
14 got very upset because of the way we did it and
15 was not happy and went to Chief Jacobs and asked
16 to have me removed, because I directed the
17 investigation. And Chief Jacobs removed me based
18 on that conversation with the union. That's what
19 occurred immediately prior to my removal. There
20 were several other investigations that we
21 disagreed on leading up to that, but that was one
22 of the ones that I recall.

23 Q. Do you remember any of the other ones?

24 A. I would -- I would have to -- I would

1 have to review some of the investigations that
2 came out of IA at the time. But I would say
3 generally during the beginning of my tenure in
4 internal affairs, her and I were on the same page
5 for every investigation. During the course of my
6 tenure there, we started being -- having a
7 difference of opinion on how things should be
8 investigated, on how things -- the outcome of some
9 investigations. And it just culminated at the end
10 of 2016 with the Schwegler investigation.

11 I believe there was another -- I think
12 there was an accusation made by an officer that I
13 was talking about her investigation, and that
14 accusation came down. That's not unusual. But
15 that was being investigated by internal affairs as
16 well, and that I had talked about an investigation
17 to somebody else. And so that occurred around the
18 same time as the Schwegler investigation.

19 Q. So did you -- Falacia Dragin?

20 A. Yes, that was her name.

21 Q. You were being accused of basically
22 reassuring the focus of the investigation that he
23 didn't have anything to worry about?

24 A. Yes, that was the accusation. And that

1 was investigated by internal affairs. I was not
2 interviewed in that one. Actually they
3 interviewed everybody else and said that they
4 didn't need to interview me unless I wanted to be
5 interviewed for that. And I saw no point if they
6 had already come to a conclusion.

7 And that -- so those things occurred
8 about the same time that her loss of confidence in
9 us being on the same page for internal affairs
10 investigations, that's a very necessary portion of
11 that relationship with the chief of police, and
12 she reassigned me.

13 Q. Did you feel that you were on the same
14 page as the chief about this investigation, the
15 Eric Moore investigation?

16 A. Not always.

17 Q. Okay. What were you not on the same
18 page about?

19 A. I don't recall specifically. This was
20 a difficult investigation. I will tell you that,
21 you know, based on what we knew about the way he
22 behaved, I felt that a sustained lying charge was
23 something that we could -- we could absolutely
24 sustain and argue. But that's not my decision to

1 make. I can -- it can leave internal affairs with
2 something that -- where he is not being
3 forthcoming and not necessarily truthful during
4 the course of the investigation, but I can't
5 control the outcome of that. And I would say that
6 he most likely could have been charged -- we could
7 have pursued that at least. We may not have been
8 able to survive an arbitration about that, but we
9 could have probably pursued it.

10 Q. Did you feel that given the information
11 you had provided to the chief and the chain of
12 command about Sergeant Moore's conduct as the
13 investigation progressed, that the chain of
14 command should have removed him from active duty?

15 A. I don't -- we talked about it at
16 different junctures during the course of the
17 investigation. I think in the very beginning, no,
18 we don't necessarily believe that he should be
19 relieved of duty. But as we are continuing to
20 interview, I don't remember at what point I had a
21 feeling or a determination that if it was my
22 decision to make, I would go in this direction.
23 But it's never really my decision to make.

24 My -- the chief would sometimes ask my

1 opinion about what I wanted to do or what I
2 thought, but it wasn't necessarily something that
3 she considered when she was making her decision.
4 My job was to relay the information that was
5 coming forward at certain points of the
6 investigation and to talk to her about, do you
7 want to make a change? I don't get to weigh in on
8 that decision typically.

9 Q. I just was -- meant to ask whether that
10 was one of the things that you didn't feel like
11 you were on the same page about during this
12 investigation?

13 A. I would say I never expect me and
14 the -- I never expected me and the chief to agree
15 on everything. The Moore investigation, we
16 were -- we disagreed about several things during
17 the course of the Moore investigation, but it
18 wasn't one of those ones that brought me to the
19 point where I felt like the chief was -- no longer
20 felt like her and I were on the same page. I
21 don't think this was the investigation that
22 brought us there.

23 Q. Okay. This actually reminds me of
24 something that I missed. There was a point in

1 this investigation that Sergeant Decker asked you
2 to request permission from the chief to do a
3 polygraph of Sergeant Moore?

4 A. Uh-huh.

5 Q. Do you remember that?

6 A. No, but I would have -- I would have
7 requested that most likely, and Chief Jacobs would
8 have denied that.

9 Q. Do you remember why Chief Jacobs denied
10 it?

11 A. Because she would never let us do
12 polygraphs on anybody.

13 Q. Okay. The -- what was Officer
14 Schwegler's race?

15 A. White.

16 MR. VARDARO: Okay. I think we're
17 probably close to being done. We're just going to
18 take a quick break to make sure that we don't have
19 something I'm missing here.

20 THE WITNESS: Okay.

21 (A recess is taken.)

22 Q. Okay. I was informed that it may not
23 have been 100 percent clear when I asked before.
24 But when we were talking about the narcotics

1 position and I was sort of trying to sum it up, I
2 had said that Sergeant Moore had filled the
3 position with a less senior white officer and
4 passed over more senior black officers in order to
5 do it. And you had responded that he passed over
6 more senior black officers and also white
7 officers?

8 A. It appeared from the list.

9 Q. Okay. But no white officers who had
10 not withdrawn their bids or passed on the job,
11 right?

12 MR. COGLIANESE: Objection. Go ahead.

13 A. I --

14 Q. You're not aware of him passing over
15 white officers who had not withdrawn their bids?

16 A. I am not.

17 Q. Okay. Officer Schwegler?

18 A. Schwegler.

19 Q. Was he terminated or not?

20 A. Eventually he was.

21 Q. Okay. Chief Jacobs was not in favor of
22 it, but she ended up doing it or --

23 A. So there was several investigations.
24 He finally was terminated from one of them. My

1 feeling was that he should have been terminated
2 for the sexual harassment.

3 Q. Okay.

4 A. And then the second investigation that
5 occurred related to his activities with his
6 girlfriend, in my opinion, were definitely
7 terminable. And so, yeah, he should have been
8 terminated.

9 Q. But that's the one that resulted in his
10 termination is the one with his girlfriend?

11 A. I think that part B of that after I
12 left internal affairs was handled by the
13 subsequent commander and they ruled for
14 termination moving forward. So he eventually was
15 terminated, just not when I felt that he should.

16 Q. Oh, yeah, did he get discipline out of
17 sexual harassment one?

18 A. Yes, he received discipline.

19 Q. What was the discipline?

20 A. I think he did a significant amount of
21 days off. So it was -- you know, it was serious
22 consequences, it was critical misconduct. I just
23 firmly believe that that should have resulted in
24 termination.

1 Q. What -- did he admit to the sexual
2 harassment or did --

3 A. No, he did not. But he had three
4 different women that were -- came forward. We had
5 very similar stories. He lied during the course
6 of the investigation, we could not prove that.

7 Q. Okay.

8 A. He did not admit it, but that we still
9 had substantive evidence to support that it
10 occurred.

11 Q. Okay. And then was one of the other
12 investigations that you did not see eye to eye or
13 were not on the same page with the chief the
14 investigation of racial profiling in zone seven?

15 A. Zone five, precinct seven.

16 Q. Oh, okay. I'm sorry.

17 A. Precinct seven definitely.

18 Q. Okay. What was that about?

19 A. Sure you don't want to close the door
20 now?

21 Q. If you could sum up. Actually, I'll
22 interrupt you just this one time.

23 A. Thank you.

24 Q. Is it the case that essentially your

1 conclusion and the conclusion of your -- the
2 sergeant who was doing the investigation was that
3 two white officers in zone five, seventh precinct
4 were engaging in racial profiling and the chief
5 did not support that conclusion?

6 A. That would be a very brief summary of
7 -- yes, that would be a very brief summary of what
8 occurred.

9 Q. Okay. It's an accurate summary?

10 A. Yes.

11 Q. Okay. There were other officers who
12 you believe were engaging in this same conduct in
13 that precinct or that zone that the chief didn't
14 allow you to investigate; is that also accurate?

15 A. That is accurate.

16 Q. Okay. Were there other concerns you
17 had about the chief's response to that
18 investigation or supervision of that
19 investigation?

20 A. I had a lot of concerns about that
21 investigation. I do not necessarily get to direct
22 the course of every investigation. When I became
23 aware of certain conduct, I brought it to chief
24 and the chief determined the scope and direction

1 of the investigation.

2 Q. Based on your experience in these cases
3 that we've described, did you have concerns about
4 the chief's approach to cases that had racial
5 implications?

6 A. I had concerns about these particular
7 cases. I don't think that it was necessarily
8 related to cases with racial implications, because
9 there were no racial implications in the Schwegler
10 case. But I -- I had concerns about the course of
11 the investigations that we were doing at some
12 point, and I believed we should go in a different
13 direction. And that is where her opinion of
14 internal affairs and their -- their -- the way
15 they conduct investigations and mine diverged.

16 Q. Okay. I guess I'll take it a different
17 direction changing it to EEO implications. Did
18 you have concerns about the chief's resistance to
19 findings that officers had committed serious
20 violations of CPD EEO policy and state and federal
21 laws in that area?

22 MR. COGLIANESE: Objection. Go ahead.

23 A. I don't really know if it was relative
24 to cases just involving EEO. I will tell you that

1 there were several cases that I had concerns about
2 the direction internal affairs was permitted to go
3 regarding investigations.

4 Q. Okay.

5 A. And, yes, some of them were related to
6 EEO allegations.

7 Q. With one exception, I'm done with my
8 questions. The one exception is is there anything
9 in this many hours that you -- we've talked that
10 you feel that you need to add to or correct in
11 your testimony?

12 A. At this point, no. I can't recall
13 anything that I would like to correct at this
14 point.

15 Q. Okay. And you'll have an opportunity
16 to read and correct your transcript.

17 A. Yes. Thank you.

18 MR. VARDARO: I have no further
19 questions.

20 MR. COGLIANESE: She'll read.

21 (Signature not waived.)

22 - - - - -

23 Thereupon, the foregoing proceedings
24 concluded at 4:51 p.m.

1 State of Ohio : C E R T I F I C A T E
2 County of Franklin: SS

3 I, Mary Bradley, RPR, CRR, a Notary Public in
4 and for the State of Ohio, do hereby certify the
5 within named Jennifer Knight was by me first duly
6 sworn to testify to the whole truth in the cause
7 aforesaid; testimony then given was by me reduced
8 to stenotypy in the presence of said witness,
9 afterwards transcribed by me; the foregoing is a
10 true record of the testimony so given; and this
11 deposition was taken at the time and place as
12 specified on the title page.

13 I do further certify I am not a relative,
14 employee or attorney of any of the parties hereto,
15 and further I am not a relative or employee of any
16 attorney or counsel employed by the parties
17 hereto, or financially interested in the action.

18 IN WITNESS WHEREOF, I have hereunto set my
19 hand and affixed my seal of office at Columbus,
20 Ohio, on August 6, 2019.

21
22
23
24


25 Mary Bradley, Notary Public - State of Ohio
26 My commission expires September 19, 2019.

Witness Errata and Signature Sheet
Correction or Change Reason Code
1-Misspelling 2-Word Omitted 3-Wrong Word
4-Clarification 5-Other (Please explain)

Page/Line	Correction or Change	Reason Code
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I, Jennifer Knight, have read the entire transcript of my deposition taken in this matter, or the same has been read to me. I request that the changes noted on my errata sheet(s) be entered into the record for the reasons indicated.

Date_____Signature_____

The witness has failed to sign the deposition within the time allowed.

Date_____Signature_____

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